

## OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978

AUGUST 10 (legislative day MAY 17), 1978.—Ordered to be printed

Mr. JACKSON, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany S. 9]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 9) to establish a policy for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

*That this Act may be cited as the "Outer Continental Shelf Lands Act Amendments of 1978".*

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TITLE I—FINDINGS AND PURPOSES WITH RESPECT TO  
MANAGING THE RESOURCES OF THE OUTER CONTI-  
NENTAL SHELF

## FINDINGS

*Sec. 101. The Congress finds and declares that—*

*(1) the demand for energy in the United States is increasing and will continue to increase for the foreseeable future;*

*(2) domestic production of oil and gas has declined in recent years;*

*(3) the United States has become increasingly dependent upon imports of oil from foreign nations to meet domestic energy demand;*

*(4) increasing reliance on imported oil is not inevitable, but is rather subject to significant reduction by increasing the development of domestic sources of energy supply;*

*(5) consumption of natural gas in the United States has greatly exceeded additions to domestic reserves in recent years;*

*(6) technology is or can be made available which will allow significantly increased domestic production of oil and gas without undue harm or damage to the environment;*

*(7) the Outer Continental Shelf contains significant quantities of oil and natural gas and is a vital national resource reserve which must be carefully managed so as to realize fair value, to preserve and maintain competition, and to reflect the public interest;*

*(8) there presently exists a variety of technological, economic, environmental, administrative, and legal problems which tend to retard the development of the oil and natural gas reserves of the Outer Continental Shelf;*

*(9) environmental and safety regulations relating to activities on the Outer Continental Shelf should be reviewed in light of current technology and information;*

*(10) the development, processing, and distribution of the oil and gas resources of the Outer Continental Shelf, and the siting of related energy facilities, may cause adverse impacts on various States and local governments;*

*(11) policies, plans, and programs developed by States and local governments in response to activities on the Outer Continental Shelf cannot anticipate and ameliorate such adverse impacts unless such States, working in close cooperation with affected local*

governments, are provided with timely access to information regarding activities on the Outer Continental Shelf and an opportunity to review and comment on decisions relating to such activities;

(12) funds must be made available to pay for the prompt removal of any oil spilled or discharged as a result of activities on the Outer Continental Shelf and for any damages to public or private interests caused by such spills or discharges;

(13) because of the possible conflicts between exploitation of the oil and gas resources in the Outer Continental Shelf and other uses of the marine environment, including fish and shellfish growth and recovery, and recreational activity, the Federal Government must assume responsibility for the minimization or elimination of any conflict associated with such exploitation;

(14) the oil and gas resources of the Outer Continental Shelf are limited, nonrenewable resources which must be developed in a manner which takes into consideration the Nation's long-range energy needs and also assures adequate protection of the renewable resources of the Outer Continental Shelf which are a continuing and increasingly important source of food and protein to the Nation and the world; and

(15) funds must be made available to pay for damage to commercial fishing vessels and gear resulting from activities involving oil and gas exploration, development, and production on the Outer Continental Shelf.

#### PURPOSES

SEC. 102. *The purposes of this Act are to—*

(1) establish policies and procedures for managing the oil and natural gas resources of the Outer Continental Shelf which are intended to result in expedited exploration and development of the Outer Continental Shelf in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade;

(2) preserve, protect, and develop oil and natural gas resources in the Outer Continental Shelf in a manner which is consistent with the need (A) to make such resources available to meet the Nation's energy needs as rapidly as possible, (B) to balance orderly energy resource development with protection of the human, marine, and coastal environments, (C) to insure the public a fair and equitable return on the resources of the Outer Continental Shelf, and (D) to preserve and maintain free enterprise competition;

(3) encourage development of new and improved technology for energy resource production which will eliminate or minimize risk of damage to the human, marine, and coastal environments;

(4) provide States, and through States, local governments, which are impacted by Outer Continental Shelf oil and gas exploration, development, and production with comprehensive assistance in order to anticipate and plan for such impact, and thereby to assure adequate protection of the human environment;

(5) assure that States, and through States, local governments, have timely access to information regarding activities on the Outer Continental Shelf, and opportunity to review and comment on decisions relating to such activities, in order to anticipate, ameliorate, and plan for the impacts of such activities;

(6) assure that States, and through States, local governments, which are directly affected by exploration, development, and production of oil and natural gas are provided an opportunity to participate in policy and planning decisions relating to management of the resources of the Outer Continental Shelf;

(7) minimize or eliminate conflicts between the exploration, development, and production of oil and natural gas, and the recovery of other resources such as fish and shellfish;

(8) establish an oilspill liability fund to pay for the prompt removal of any oil spilled or discharged as a result of activities on the Outer Continental Shelf and for any damages to public or private interests caused by such spills or discharges;

(9) insure that the extent of oil and natural gas resources of the Outer Continental Shelf is assessed at the earliest practicable time; and

(10) establish a fishermen's contingency fund to pay for damages to commercial fishing vessels and gear due to Outer Continental Shelf activities.

## TITLE II—AMENDMENTS TO THE OUTER CONTINENTAL SHELF LANDS ACT

### DEFINITIONS

SEC. 201. (a) Paragraphs (b) and (c) of section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331 (b) and (c)) are amended to read as follows:

"(b) The term 'Secretary' means the Secretary of the Interior, except that with respect to functions under this Act transferred to, or vested in, the Secretary of Energy or the Federal Energy Regulatory Commission by or pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), the term 'Secretary' means the Secretary of Energy, or the Federal Energy Regulatory Commission, as the case may be;

"(c) The term 'lease' means any form of authorization which is issued under section 8 or maintained under section 6 of this Act and which authorizes exploration for, and development and production of, minerals;"

(b) Such section is further amended—

(1) in paragraph (d), by striking out the period and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following new paragraphs:

"(e) The term 'coastal zone' means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transition and intertidal areas, salt marshes,

wetlands, and beaches, which zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 305(b)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454(b)(1));

“(f) The term ‘affected State’ means, with respect to any program, plan, lease sale, or other activity, proposed, conducted, or approved pursuant to the provisions of this Act, any State—

“(1) the laws of which are declared, pursuant to section 4(a)(2) of this Act, to be the law of the United States for the portion of the outer Continental Shelf on which such activity is, or is proposed to be, conducted;

“(2) which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 4(a)(1) of this Act;

“(3) which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the outer Continental Shelf and transported directly to such State by means of vessels or by a combination of means including vessels;

“(4) which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the outer Continental Shelf; or

“(5) in which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities;

“(g) The term ‘marine environment’ means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the outer Continental Shelf;

“(h) The term ‘coastal environment’ means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone;

“(i) The term ‘human environment’ means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the outer Continental Shelf;

"(j) The term 'Governor' means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to such Governor pursuant to this Act;

"(k) The term 'exploration' means the process of searching for minerals, including (1) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals, and (2) any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after such discovery which is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production;

"(l) The term 'development' means those activities which take place following discovery of minerals in paying quantities, including geophysical activity, drilling, platform construction, and operation of all onshore support facilities, and which are for the purpose of ultimately producing the minerals discovered;

"(m) The term 'production' means those activities which take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and work-over drilling;

"(n) The term 'antitrust law' means—

"(1) the Sherman Act (15 U.S.C. 1 et seq.);

"(2) the Clayton Act (15 U.S.C. 12 et seq.);

"(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

"(4) the Wilson Tariff Act (15 U.S.C. 8 et seq.); or

"(5) the Act of June 19, 1936, chapter 692 (15 U.S.C. 13, 13a, 13b, and 21a);

"(o) The term 'fair market value' means the value of any mineral (1) computed at a unit price equivalent to the average unit price at which such mineral was sold pursuant to a lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to such lease, or (2) if there were no such sales, or if the Secretary finds that there were an insufficient number of such sales to equitably determine such value, computed at the average unit price at which such mineral was sold pursuant to other leases in the same region of the outer Continental Shelf during such period, or (3) if there were no sales of such mineral from such region during such period, or if the Secretary finds that there are an insufficient number of such sales to equitably determine such value, at an appropriate price determined by the Secretary;

"(p) The term 'major Federal action' means any action or proposal by the Secretary which is subject to the provisions of section 102(2) (C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2) (C)); and

"(q) The term 'minerals' includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from 'public lands' as defined in section 103 of the Federal Land Policy and Management Act of 1976."

NATIONAL POLICY FOR THE OUTER CONTINENTAL SHELF

SEC. 202. Section 3 of the Outer Continental Shelf Lands Act (43 U.S.C. 1332) is amended to read as follows:

"SEC. 3. NATIONAL POLICY FOR THE OUTER CONTINENTAL SHELF.—  
It is hereby declared to be the policy of the United States that—

"(1) the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act;

"(2) this Act shall be construed in such a manner that the character of the waters above the outer Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected;

"(3) the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditions and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs;

"(4) since exploration, development, and production of the minerals of the outer Continental Shelf will have significant impacts on coastal and non-coastal areas of the coastal States, and on other affected States, and, in recognition of the national interest in the effective management of the marine, coastal, and human environments—

"(A) such States and their affected local governments may require assistance in protecting their coastal zones and other affected areas from any temporary or permanent adverse effects of such impacts; and

"(B) such States, and through such States, affected local governments, are entitled to an opportunity to participate, to the extent consistent with the national interest, in the policy and planning decisions made by the Federal Government relating to exploration for, and development and production of, minerals of the outer Continental Shelf;

"(5) the rights and responsibilities of all States and, where appropriate, local governments, to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized; and

"(6) operations in the outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health."

LAWS APPLICABLE TO THE OUTER CONTINENTAL SHELF

SEC. 203. (a) Section 4(a) (1) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333 (a) (1)) is amended—

(1) by striking out "and fixed structures" and inserting in lieu thereof "and all installations and other devices permanently or temporarily attached to the seabed"; and

(2) by striking out "removing, and transporting resources therefrom" and inserting in lieu thereof "or producing resources therefrom; or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources".

(b) Section 4(a)(2) of such Act is amended by redesignating paragraph (2) as (2)(A) and by adding at the end thereof the following new subparagraph:

"(B) Within one year after the date of enactment of this subparagraph, the President shall establish procedures for settling any outstanding international boundary dispute respecting the outer Continental Shelf."

(c) Section 4(c) of such Act is amended by striking out "described in subsection (b)" and inserting in lieu thereof "conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf".

(d) Section 4(d) of such Act is amended to read as follows:

"(d) For the purposes of the National Labor Relations Act, as amended, any unfair labor practice, as defined in such Act, occurring upon any artificial island, installation, or other device referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the State, the laws of which apply to such artificial island, installation, or other device pursuant to such subsection, except that until the President determines the areas within which such State laws are applicable, the judicial district shall be that of the State nearest the place of location of such artificial island, installation, or other device."

(e) Section 4 of such Act is amended—

(1) in paragraph (1) of subsection (e), by striking out "the islands and structures referred to in subsection (a)", and inserting in lieu thereof "the artificial islands, installations, and other devices referred to in subsection (a)";

(2) in subsection (f), by striking out "artificial islands and fixed structures located on the outer Continental Shelf" and inserting in lieu thereof "the artificial islands, installations, and other devices referred to in subsection (a)"; and

(3) in subsection (g), by striking out "the artificial islands and fixed structures referred to in subsection (a)" and inserting in lieu thereof "the artificial islands, installations, and other devices referred to in subsection (a)".

(f) Section 4(e)(1) of such Act is amended by striking out "head" and inserting in lieu thereof "Secretary".

(g) Section 4(e)(2) of such Act is amended to read as follows:

"(2) The Secretary of the Department in which the Coast Guard is operating may mark for the protection of navigation any artificial island, installation, or other device referred to in subsection (a) whenever the owner has failed suitably to mark such island, installation, or other device in accordance with regulations issued under this Act, and the owner shall pay the cost of such marking."

(h) Section 4 of such Act is further amended by striking out subsection (b) and relettering subsections (c), (d), (e), (f), and (g) as subsections (b), (c), (d), (e), and (f), respectively.

OUTER CONTINENTAL SHELF EXPLORATION AND DEVELOPMENT  
ADMINISTRATION

SEC. 204. Section 5 of the Outer Continental Shelf Lands Act (43 U.S.C. 1334) is amended to read as follows:

"SEC. 5. ADMINISTRATION OF LEASING OF THE OUTER CONTINENTAL SHELF.—(a) The Secretary shall administer the provisions of this Act relating to the leasing of the outer Continental Shelf, and shall prescribe such rules and regulations as may be necessary to carry out such provisions. The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein, and, notwithstanding any other provisions herein, such rules and regulations shall, as of their effective date, apply to all operations conducted under a lease issued or maintained under the provisions of this Act. In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary shall cooperate with the relevant departments and agencies of the Federal Government and of the affected States. In the formulation and promulgation of regulations, the Secretary shall request and give due consideration to the views of the Attorney General with respect to matters which may affect competition. In considering any regulations and in preparing any such views, the Attorney General shall consult with the Federal Trade Commission. The regulations prescribed by the Secretary under this subsection shall include, but not be limited to, provisions—

"(1) for the suspension or temporary prohibition of any operation or activity, including production, pursuant to any lease or permit (A) at the request of a lessee, in the national interest, to facilitate proper development of a lease or to allow for the construction or negotiation for use of transportation facilities, or (B) if there is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), or to the marine, coastal, or human environment, and for the extension of any permit or lease affected by suspension or prohibition under clause (A) or (B) by a period equivalent to the period of such suspension or prohibition, except that no permit or lease shall be so extended when such suspension or prohibition is the result of gross negligence or willful violation of such lease or permit, or of regulations issued with respect to such lease or permit;

"(2) with respect to cancellation of any lease or permit—

"(A) that such cancellation may occur at any time, if the Secretary determines, after a hearing, that—

"(i) continued activity pursuant to such lease or permit would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to

any mineral (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment;

"(ii) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

"(iii) the advantages of cancellation outweigh the advantages of continuing such lease or permit in force;

"(B) that such cancellation shall not occur unless and until operations under such lease or permit shall have been under suspension, or temporary prohibition, by the Secretary, with due extension of any lease or permit term continuously for a period of five years, or for a lesser period upon request of the lessee;

"(C) that such cancellation shall entitle the lessee to receive such compensation as he shows to the Secretary as being equal to the lesser of (i) the fair value of the canceled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, in the case of an oil spill, and all other costs reasonably anticipated on the lease, or (ii) the excess, if any, over the lessee's revenues, from the lease (plus interest thereon from the date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement), except that (I) with respect to leases issued before the date of enactment of this subparagraph, such compensation shall be equal to the amount specified in clause (i) of this subparagraph; and (II) in the case of joint leases which are canceled due to the failure of one or more partners to exercise due diligence, the innocent parties shall have the right to seek damages for such loss from the responsible party or parties and the right to acquire the interests of the negligent party or parties and be issued the lease in question;

"(3) for the assignment or relinquishment of a lease;

"(4) for unitization, pooling, and drilling agreements;

"(5) for the subsurface storage of oil and gas other than by the Federal Government;

"(6) for drilling or easements necessary for exploration, development, and production;

"(7) for the prompt and efficient exploration and development of a lease area; and

"(8) for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), to the extent that activities authorized under this Act significantly affect the air quality of any State.

"(b) The issuance and continuance in effect of any lease, or of any assignment or other transfer of any lease, under the provisions of this

Act shall be conditioned upon compliance with regulations issued under this Act.

"(c) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of this Act, or of the lease, or of the regulations issued under this Act, such lease may be canceled by the Secretary, subject to the right of judicial review as provided in this Act, if such default continues for the period of thirty days after mailing of notice by registered letter to the lease owner at his record post office address.

"(d) Whenever the owner of any producing lease fails to comply with any of the provisions of this Act, of the lease, or of the regulations issued under this Act, such lease may be forfeited and canceled by an appropriate proceeding in any United States district court having jurisdiction under the provisions of this Act.

"(e) Rights-of-way through the submerged lands of the outer Continental Shelf, whether or not such lands are included in a lease maintained or issued pursuant to this Act, may be granted by the Secretary for pipeline purposes for the transportation of oil, natural gas, sulphur, or other minerals, or under such regulations and upon such conditions as may be prescribed by the Secretary, or where appropriate the Secretary of Transportation, including (as provided in section 21(b) of this Act) assuring maximum environmental protection by utilization of the best available and safest technologies, including the safest practices for pipeline burial and upon the express condition that oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from submerged lands or outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste. Failure to comply with the provisions of this section or the regulations and conditions prescribed under this section shall be ground for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any United States district court having jurisdiction under the provisions of this Act.

"(f) (1) Except as provided in paragraph (2), every permit, license, easement, right-of-way, or other grant of authority for the transportation by pipeline on or across the outer Continental Shelf of oil or gas shall require that the pipeline be operated in accordance with the following competitive principles:

"(A) The pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers.

"(B) Upon the specific request of one or more owner or non-owner shippers able to provide a guaranteed level of throughput, and on the condition that the shipper or shippers requesting such expansion shall be responsible for bearing their proportionate share of the costs and risks related thereto, the Federal Energy Regulatory Commission may, upon finding, after a full hearing with due notice thereof to the interested parties, that such expansion is within technological limits and economic feasibility, order a subsequent expansion of throughput capacity of any pipeline for

which the permit, license, easement, right-of-way, or other grant of authority is approved or issued after the date of enactment of this subparagraph. This subparagraph shall not apply to any such grant of authority approved or issued for the Gulf of Mexico or the Santa Barbara Channel.

"(2) The Federal Energy Regulatory Commission may, by order or regulation, exempt from any or all of the requirements of paragraph (1) of this subsection any pipeline or class of pipelines which feeds into a facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated, or otherwise processed.

"(3) The Secretary of Energy and the Federal Energy Regulatory Commission shall consult with and give due consideration to the views of the Attorney General on specific conditions to be included in any permit, license, easement, right-of-way, or grant of authority in order to ensure that pipelines are operated in accordance with the competitive principles set forth in paragraph (1) of this subsection. In preparing any such views, the Attorney General shall consult with the Federal Trade Commission.

"(4) Nothing in this subsection shall be deemed to limit, abridge, or modify any authority of the United States under any other provision of law with respect to pipelines on or across the outer Continental Shelf.

"(g) (1) The lessee shall produce any oil or gas, or both, obtained pursuant to an approved development and production plan, at rates consistent with any rule or order issued by the President in accordance with any provision of law.

"(2) If no rule or order referred to in paragraph (1) has been issued, the lessee shall produce such oil or gas, or both, at rates consistent with any regulation promulgated by the Secretary of Energy which is to assure the maximum rate of production which may be sustained without loss of ultimate recovery of oil or gas, or both, under sound engineering and economic principles, and which is safe for the duration of the activity covered by the approved plan. The Secretary may permit the lessee to vary such rates if he finds that such variance is necessary.

"(h) The head of any Federal department or agency who takes any action which has a direct and significant effect on the outer Continental Shelf or its development shall promptly notify the Secretary of such action and the Secretary shall thereafter notify the Governor of any affected State and the Secretary may thereafter recommend such changes in such action as are considered appropriate.

"(i) After the date of enactment of this section, no holder of any oil and gas lease issued or maintained pursuant to this Act shall be permitted to flare natural gas from any well unless the Secretary finds that there is no practicable way to complete production of such gas, or that such flaring is necessary to alleviate a temporary emergency situation or to conduct testing or work-over operations."

#### REVISION OF BIDDING AND LEASE ADMINISTRATION

SEC. 205. (a) Subsections (a) and (b) of section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337 (a) and (b)) are amended to read as follows:

"(a) (1) *The Secretary is authorized to grant to the highest responsible qualified bidder or bidders by competitive bidding, under regulations promulgated in advance, any oil and gas lease on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. Such regulations may provide for the deposit of cash bids in an interest-bearing account until the Secretary announces his decision on whether to accept the bids, with the interest earned thereon to be paid to the Treasury as to bids that are accepted and to the unsuccessful bidders as to bids that are rejected. The bidding shall be by sealed bid and, at the discretion of the Secretary, on the basis of—*

"(A) *cash bonus bid with a royalty at not less than 12½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold;*

"(B) *variable royalty bid based on a per centum in amount or value of the production saved, removed, or sold, with either a fixed work commitment based on dollar amount for exploration or a fixed cash bonus as determined by the Secretary, or both;*

"(C) *cash bonus bid, or work commitment bid based on a dollar amount for exploration with a fixed cash bonus, and a diminishing or sliding royalty based on such formulae as the Secretary shall determine as equitable to encourage continued production from the lease area as resources diminish, but not less than 12½ per centum at the beginning of the lease period in amount or value of the production saved, removed, or sold;*

"(D) *cash bonus bid with a fixed share of the net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;*

"(E) *fixed cash bonus with the net profit share reserved as the bid variable;*

"(F) *cash bonus bid with a royalty at no less than 12½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold and a fixed per centum share of net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;*

"(G) *work commitment bid based on a dollar amount for exploration with a fixed cash bonus and a fixed royalty in amount or value of the production saved, removed, or sold; or*

"(H) *subject to the requirements of paragraph (4) of this subsection, any modification of bidding systems authorized in subparagraphs (A) through (G), or any other systems of bid variables, terms, and conditions which the Secretary determines to be useful to accomplish the purposes and policies of this Act, except that no such bidding system or modification shall have more than one bid variable.*

"(2) *The Secretary may, in his discretion, defer any part of the payment of the cash bonus, as authorized in paragraph (1) of this subsection, according to a schedule announced at the time of the announcement of the lease sale, but such payment shall be made in total no later than five years after the date of the lease sale.*

"(3) *The Secretary may, in order to promote increased production on the lease area, through direct, secondary, or tertiary recovery means,*

*reduce or eliminate any royalty or net profit share set forth in the lease for such area.*

*"(4) (A) The Secretary of Energy shall submit any bidding system authorized in subparagraph (H) of paragraph (1) to the Senate and House of Representatives. The Secretary may institute such bidding system unless either the Senate or the House of Representatives passes a resolution of disapproval within thirty days after receipt of the bidding system.*

*"(B) Subparagraphs (C) through (J) of this paragraph are enacted by Congress—*

*"(i) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but they are applicable only with respect to the procedures to be followed in that House in the case of resolutions described by this paragraph, and they supersede other rules only to the extent that they are inconsistent therewith; and*

*"(ii) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.*

*"(C) A resolution disapproving a bidding system submitted pursuant to this paragraph shall immediately be referred to a committee (and all resolutions with respect to the same request shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.*

*"(D) If the committee to which has been referred any resolution disapproving the bidding system of the Secretary has not reported the resolution at the end of ten calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution with respect to the same bidding system which has been referred to the committee.*

*"(E) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same recommendation), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.*

*"(F) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same bidding system.*

*"(G) When the committee has reported, or has been discharged from further consideration of, a resolution as provided in this paragraph, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.*

*"(H) Debate on the resolution is limited to not more than two hours, to be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.*

*"(I) Motions to postpone, made with respect to the discharge from the committee, or the consideration of a resolution with respect to a bidding system, and motions to proceed to the consideration of other business, shall be decided without debate.*

*"(J) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a bidding system shall be decided without debate.*

*"(5) (A) During the five-year period commencing on the date of enactment of this subsection, the Secretary may, in order to obtain statistical information to determine which bidding alternatives will best accomplish the purposes and policies of this Act, require, as to no more than 10 per centum of the tracts offered each year, each bidder to submit bids for any area of the outer Continental Shelf in accordance with more than one of the bidding systems set forth in paragraph (1) of this subsection. For such statistical purposes, leases may be awarded using a bidding alternative selected at random for the acquisition of valid statistical data if such bidding alternative is otherwise consistent with the provisions of this Act.*

*"(B) The bidding systems authorized by paragraph (1) of this subsection, other than the system authorized by subparagraph (A), shall be applied to not less than 20 per centum and not more than 60 per centum of the total area offered for leasing each year during the five-year period beginning on the date of enactment of this subsection, unless the Secretary determines that the requirements set forth in this subparagraph are inconsistent with the purposes and policies of this Act.*

*"(6) At least ninety days prior to notice of any lease sale under subparagraph (D), (E), (F), or, if appropriate, (H) of paragraph (1), the Secretary shall by regulation establish rules to govern the calculation of net profits. In the event of any dispute between the United States and a lessee concerning the calculation of the net profits under the regulation issued pursuant to this paragraph, the burden of proof shall be on the lessee.*

*"(7) After an oil and gas lease is granted pursuant to any of the work commitment options of paragraph (1) of this subsection—*

*"(A) the lessee, at its option, shall deliver to the Secretary upon issuance of the lease either (i) a cash deposit for the full amount of the exploration work commitment, or (ii) a performance bond in form and substance and with a surety satisfactory to the Secretary, in the principal amount of such exploration work commitment assuring the Secretary that such commitment shall be faithfully discharged in accordance with this section, regulations, and the lease; and for purposes of this subparagraph, the principal amount of such cash deposit or bond may, in accordance with regulations, be periodically reduced upon proof,*

satisfactory to the Secretary, that a portion of the exploration work commitment has been satisfied;

"(B) 50 per centum of all exploration expenditures on, or directly related to, the lease, including, but not limited to (i) geological investigations and related activities, (ii) geophysical investigations including seismic, geomagnetic, and gravity surveys, data processing and interpretation, and (iii) exploratory drilling, core drilling, redrilling, and well completion or abandonment, including the drilling of wells sufficient to determine the size and areal extent of any newly discovered field, and including the cost of mobilization and demobilization of drilling equipment, shall be included in satisfaction of the commitment, except that the lessee's general overhead cost shall not be so included against the work commitment, but its cost (including employee benefits) of employees directly assigned to such exploration work shall be so included; and

"(C) if at the end of the primary term of the lease, including any extension thereof, the full dollar amount of the exploration work commitment has not been satisfied, the balance shall then be paid in cash to the Secretary.

"(8) Not later than thirty days before any lease sale, the Secretary shall submit to the Congress and publish in the Federal Register a notice—

"(A) identifying any bidding system which will be utilized for such lease sale and the reasons for the utilization of such bidding system; and

"(B) designating the lease tracts selected which are to be offered in such sale under the bidding system authorized by subparagraph (A) of paragraph (1) and the lease tracts selected which are to be offered under any one or more of the bidding systems authorized by subparagraphs (B) through (H) of paragraph (1), and the reasons such lease tracts are to be offered under a particular bidding system.

"(9) Within six months after the end of each fiscal year, the Secretary of Energy, in consultation with the Secretary of the Interior, shall report to the Congress with respect to the use of various bidding options provided for in this subsection. Such report shall include—

"(A) the schedule of all lease sales held during such year and the bidding system or systems utilized;

"(B) the schedule of all lease sales to be held the following year and the bidding system or systems to be utilized;

"(C) the benefits and costs associated with conducting lease sales using the various bidding systems;

"(D) if applicable, the reasons why a particular bidding system has not been or will not be utilized; and

"(E) if applicable, the reasons why more than 60 per centum or less than 20 per centum of the area leased in the past year, or to be offered for lease in the upcoming year, was or is to be leased under the bidding system authorized by subparagraph (A) of paragraph (1) of this subsection.

"(b) An oil and gas lease issued pursuant to this section shall—

"(1) be for a tract consisting of a compact area not exceeding five thousand seven hundred and sixty acres, as the Secretary may

determine, unless the Secretary finds that a larger area is necessary to comprise a reasonable economic production unit;

"(2) be for an initial period of—

"(A) five years; or

"(B) not to exceed ten years where the Secretary finds that such longer period is necessary to encourage exploration and development in areas because of unusually deep water or other unusually adverse conditions, and as long after such initial period as oil or gas is produced from the area in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon;

"(3) require the payment of amount or value as determined by one of the bidding systems set forth in subsection (a) of this section;

"(4) entitle the lessee to explore, develop, and produce the oil and gas contained within the lease area, conditioned upon due diligence requirements and the approval of the development and production plan required by this Act;

"(5) provide for suspension or cancellation of the lease during the initial lease term or thereafter pursuant to section 5 of this Act;

"(6) contain such rental and other provisions as the Secretary may prescribe at the time of offering the area for lease; and

"(7) provide a requirement that the lessee offer 20 per centum of the crude oil, condensate, and natural gas liquids produced on such lease, at the market value and point of delivery applicable to Federal royalty oil, to small or independent refiners as defined in the Emergency Petroleum Allocation Act of 1973."

(b) Section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337) is further amended by striking out subsection (j), by relettering subsections (c) through (i), and all references thereto, as subsections (i) through (o), respectively, and by inserting immediately after subsection (b) the following new subsections:

"(c) (1) Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids, the Secretary shall allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of such lease sale, except that the Attorney General, after consultation with the Federal Trade Commission, may agree to a shorter review period.

"(2) The Attorney General may, in consultation with the Federal Trade Commission, conduct such antitrust review on the likely effects the issuance of such leases would have on competition as the Attorney General, after consultation with the Federal Trade Commission, deems appropriate and shall advise the Secretary with respect to such review. The Secretary shall provide such information as the Attorney General, after consultation with the Federal Trade Commission, may require in order to conduct any antitrust review pursuant to this paragraph and to make recommendations pursuant to paragraph (3) of this subsection.

"(3) The Attorney General, after consultation with the Federal Trade Commission, may make such recommendations to the Secretary,

*including the nonacceptance of any bid, as may be appropriate to prevent any situation inconsistent with the antitrust laws. If the Secretary determines, or if the Attorney General advises the Secretary, after consultation with the Federal Trade Commission and prior to the issuance of any lease, that such lease may create or maintain a situation inconsistent with the antitrust laws, the Secretary may—*

*"(A) refuse (i) to accept an otherwise qualified bid for such lease, or (ii) to issue such lease, notwithstanding subsection (a) of this section; or*

*"(B) issue such lease, and notify the lessee and the Attorney General of the reason for such decision.*

*"(4) (A) Nothing in this subsection shall restrict the power under any other Act or the common law of the Attorney General, the Federal Trade Commission, or any other Federal department or agency to secure information, conduct reviews, make recommendations, or seek appropriate relief.*

*"(B) Neither the issuance of a lease nor anything in this subsection shall modify or abridge any private right of action under the antitrust laws.*

*"(d) No bid for a lease may be submitted if the Secretary finds, after notice and hearing, that the bidder is not meeting due diligence requirements on other leases.*

*"(e) No lease issued under this Act may be sold, exchanged, assigned, or otherwise transferred except with the approval of the Secretary. Prior to any such approval, the Secretary shall consult with and give due consideration to the views of the Attorney General.*

*"(f) Nothing in this Act shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.*

*"(g) (1) At the time of soliciting nominations for the leasing of lands within three miles of the seaward boundary of any coastal State, the Secretary shall provide the Governor of such State—*

*"(A) an identification and schedule of the areas and regions proposed to be offered for leasing;*

*"(B) all information concerning the geographical, geological, and ecological characteristics of such regions;*

*"(C) an estimate of the oil and gas reserves in the areas proposed for leasing; and*

*"(D) an identification of any field, geological structure, or trap located within three miles of the seaward boundary of such coastal State.*

*"(2) After receipt of nominations for any area of the outer Continental Shelf within three miles of the seaward boundary of any coastal State, the Secretary shall inform the Governor of such coastal State of any such area which the Secretary believes should be given further consideration for leasing. The Secretary, in consultation with the Governor of the coastal State, shall then determine whether any such area may contain one or more oil or gas pools or fields underlying both the outer Continental Shelf and lands subject to the jurisdiction of such State. If, with respect to such area, the Secretary selects a tract or tracts which may contain one or more oil or gas pools or fields*

underlying both the outer Continental Shelf and lands subject to the jurisdiction of such State, the Secretary shall offer the Governor of such coastal State the opportunity to enter into an agreement concerning the disposition of revenues which may be generated by a Federal lease within such area in order to permit their fair and equitable division between the State and Federal Government.

"(3) Within ninety days after the offer by the Secretary pursuant to paragraph (2) of this subsection, the Governor shall elect whether to enter into such agreement and shall notify the Secretary of his decision. If the Governor accepts the offer, the terms of any lease issued shall be consistent with the provisions of this Act, with applicable regulations, and, to the maximum extent practicable, with the applicable laws of the coastal State. If the Governor declines the offer, or if the parties cannot agree to terms concerning the disposition of revenues from such lease (by the time the Secretary determines to offer the area for lease), the Secretary may nevertheless proceed with the leasing of the area.

"(4) Notwithstanding any other provision of this Act, the Secretary shall deposit in a separate account in the Treasury of the United States all bonuses, royalties, and other revenues attributable to oil and gas pools underlying both the outer Continental Shelf and submerged lands subject to the jurisdiction of any coastal State until such time as the Secretary and the Governor of such coastal State agree on, or if the Secretary and the Governor of such coastal State cannot agree, as a district court of the United States determines, the fair and equitable disposition of such revenues and any interest which has accrued and the proper rate of payments to be deposited in the treasuries of the Federal Government and such coastal State.

"(h) Nothing contained in this section shall be construed to alter, limit, or modify any claim of any State to any jurisdiction over, or any right, title, or interest in, any submerged lands."

(c) Subsection (c) of section 106 of the Energy Policy and Conservation Act (42 U.S.C. 6213(c)) is amended to read as follows:

"(c) The Secretary may, in his discretion, consider a request from any person described in subsection (a) of this section for an exemption from the prohibition of this section. In considering any such request, the Secretary may exempt bidding for leases for lands in any area only if the Secretary finds, on the record after opportunity for an agency hearing, that—

"(1) such lands have extremely high cost exploration or development problems; and

"(2) exploration and development will not occur on such lands unless such exemption is granted.

Findings of the Secretary under this subsection shall be final, and shall not be invalidated unless found to be arbitrary or capricious."

#### OUTER CONTINENTAL SHELF OIL AND GAS EXPLORATION

SEC. 206. Section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340) is amended—

- (1) by inserting "(a) (1)" immediately before "Any"; and
- (2) by adding at the end thereof the following:

"(2) The provisions of paragraph (1) of this subsection shall not apply to any person conducting explorations pursuant to an approved exploration plan on any area under lease to such person pursuant to the provisions of this Act.

"(b) Except as provided in subsection (f) of this section, beginning ninety days after the date of enactment of this subsection, no exploration pursuant to any oil and gas lease issued or maintained under this Act may be undertaken by the holder of such lease, except in accordance with the provisions of this section.

"(c) (1) Except as otherwise provided in this Act, prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this Act, the holder thereof shall submit an exploration plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any one region of the outer Continental Shelf, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if he finds that such plan is consistent with the provisions of this Act, regulations prescribed under this Act, including regulations prescribed by the Secretary pursuant to paragraph (8) of section 5(a) of this Act, and the provisions of such lease. The Secretary shall require such modifications of such plan as are necessary to achieve such consistency. The Secretary shall approve such plan, as submitted or modified, within thirty days of its submission, except that the Secretary shall disapprove such plan if he determines that (A) any proposed activity under such plan would result in any condition described in section 5(a)(2)(A)(i) of this Act, and (B) such proposed activity cannot be modified to avoid such condition. If the Secretary disapproves a plan under the preceding sentence, he may, subject to section 5(a)(2)(B) of this Act, cancel such lease and the lessee shall be entitled to compensation in accordance with the regulations prescribed under section 5(a)(2)(C)(i) or (ii) of this Act.

"(2) The Secretary shall not grant any license or permit for any activity described in detail in an exploration plan and affecting any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), unless the State concurs or is conclusively presumed to concur with the consistency certification accompanying such plan pursuant to section 307(c)(3)(B)(i) or (ii) of such Act, or the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of such Act.

"(3) An exploration plan submitted under this subsection shall include, in the degree of detail which the Secretary may by regulation require—

"(A) a schedule of anticipated exploration activities to be undertaken;

"(B) a description of equipment to be used for such activities;

"(C) the general location of each well to be drilled; and

"(D) such other information deemed pertinent by the Secretary.

"(4) The Secretary may, by regulation, require that such plan be accompanied by a general statement of development and production intentions which shall be for planning purposes only and which shall not be binding on any party.

"(d) The Secretary may, by regulation, require any lessee operating under an approved exploration plan to obtain a permit prior to drilling any well in accordance with such plan."

"(e) (1) If a significant revision of an exploration plan approved under this subsection is submitted to the Secretary, the process to be used for the approval of such revision shall be the same as set forth in subsection (c) of this section."

"(2) All exploration activities pursuant to any lease shall be conducted in accordance with an approved exploration plan or an approved revision of such plan."

"(f) (1) Exploration activities pursuant to any lease for which a drilling permit has been issued or for which an exploration plan has been approved, prior to ninety days after the date of enactment of this subsection, shall be considered in compliance with this section, except that the Secretary may, in accordance with section 5 (a) (1) (B) of this Act, order a suspension or temporary prohibition of any exploration activities and require a revised exploration plan."

"(2) The Secretary may require the holder of a lease described in paragraph (1) of this subsection to supply a general statement in accordance with subsection (c) (4) of this section, or to submit other information."

"(3) Nothing in this subsection shall be construed to amend the terms of any permit or plan to which this subsection applies."

"(g) Any permit for geological explorations authorized by this section shall be issued only if the Secretary determines, in accordance with regulations issued by the Secretary, that—

"(1) the applicant for such permit is qualified;

"(2) the exploration will not interfere with or endanger operations under any lease issued or maintained pursuant to this Act; and

"(3) such exploration will not be unduly harmful to aquatic life in the area, result in pollution, create hazardous or unsafe conditions, unreasonably interfere with other uses of the area, or disturb any site, structure, or object of historical or archeological significance."

"(h) The Secretary shall not issue a lease or permit for, or otherwise allow, exploration, development, or production activities within fifteen miles of the boundaries of the Point Reyes Wilderness as depicted on a map entitled 'Wilderness Plan, Point Reyes National Seashore', numbered 612-90,000-B and dated September 1976, unless the State of California issues a lease or permit for, or otherwise allows, exploration, development, or production activities on lands beneath navigable waters (as such term is defined in section 2 of the Submerged Lands Act) of such State which are adjacent to such Wilderness."

#### ANNUAL REPORT

SEC. 207. (a) Section 15 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344) is amended to read as follows:

"SEC. 15. ANNUAL REPORT BY SECRETARY TO CONGRESS.—Within six months after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives the following reports:

"(1) A report on the leasing and production program in the outer Continental Shelf during such fiscal year, which shall include—

"(A) a detailed accounting of all moneys received and expended;

"(B) a detailed accounting of all exploration, exploratory drilling, leasing, development, and production activities;

"(C) a summary of management, supervision, and enforcement activities;

"(D) a list of all shut-in and flaring wells; and

"(E) recommendations to the Congress (i) for improvements in management, safety, and amount of production from leasing and operations in the outer Continental Shelf, and (ii) for resolution of jurisdictional conflicts or ambiguities.

"(2) A report prepared after consultation with the Attorney General, with recommendations for promoting competition in the leasing of outer Continental Shelf lands, which shall include any recommendations or findings by the Attorney General and any plans for implementing recommended administrative changes and drafts of any proposed legislation, and which shall contain—

"(A) an evaluation of the competitive bidding systems permitted under the provisions of section 8 of this Act, and, if applicable, the reasons why a particular bidding system has not been utilized;

"(B) an evaluation of alternative bidding systems not permitted under section 8 of this Act, and why such system or systems should or should not be utilized;

"(C) an evaluation of the effectiveness of restrictions on joint bidding in promoting competition and, if applicable, any suggested administrative or legislative action on joint bidding;

"(D) an evaluation of present measures and a description of any additional measures to encourage entry of new competitors; and

"(E) an evaluation of present measures and a description of additional measures dealing with supplies of oil and gas to independent refiners and distributors."

#### NEW SECTIONS OF THE OUTER CONTINENTAL SHELF LANDS ACT

SEC. 208. The Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) is amended by adding at the end thereof the following new sections:

"SEC. 18. OUTER CONTINENTAL SHELF LEASING PROGRAM.—(a) The Secretary, pursuant to procedures set forth in subsections (c) and (d) of this section, shall prepare and periodically revise, and maintain an oil and gas leasing program to implement the policies of this Act. The leasing program shall consist of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which he determines will best meet national energy needs for the five-year period following its approval or reapproval. Such leasing program shall be prepared and maintained in a manner consistent with the following principles:

"(1) Management of the outer Continental Shelf shall be conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments.

"(2) Timing and location of exploration, development, and production of oil and gas among the oil- and gas-bearing physiographic regions of the outer Continental Shelf shall be based on a consideration of—

"(A) existing information concerning the geographical, geological, and ecological characteristics of such regions;

"(B) an equitable sharing of developmental benefits and environmental risks among the various regions;

"(C) the location of such regions with respect to, and the relative needs of, regional and national energy markets;

"(D) the location of such regions with respect to other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of the resources and space of the outer Continental Shelf;

"(E) the interest of potential oil and gas producers in the development of oil and gas resources as indicated by exploration or nomination;

"(F) laws, goals, and policies of affected States which have been specifically identified by the Governors of such States as relevant matters for the Secretary's consideration;

"(G) the relative environmental sensitivity and marine productivity of different areas of the outer Continental Shelf; and

"(H) relevant environmental and predictive information for different areas of the outer Continental Shelf.

"(3) The Secretary shall select the timing and location of leasing, to the maximum extent practicable, so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.

"(4) Leasing activities shall be conducted to assure receipt of fair market value for the lands leased and the rights conveyed by the Federal Government.

"(b) The leasing program shall include estimates of the appropriations and staff required to—

"(1) obtain resource information and any other information needed to prepare the leasing program required by this section;

"(2) analyze and interpret the exploratory data and any other information which may be compiled under the authority of this Act;

"(3) conduct environmental studies and prepare any environmental impact statement required in accordance with this Act and with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

"(4) supervise operations conducted pursuant to each lease in the manner necessary to assure due diligence in the exploration

and development of the lease area and compliance with the requirements of applicable law and regulations, and with the terms of the lease.

"(c) (1) During the preparation of any proposed leasing program under this section, the Secretary shall invite and consider suggestions for such program from any interested Federal agency, including the Attorney General, in consultation with the Federal Trade Commission, and from the Governor of any State which may become an affected State under such proposed program. The Secretary may also invite or consider any suggestions from the executive of any affected local government in such an affected State, which have been previously submitted to the Governor of such State, and from any other person.

"(2) After such preparation and at least sixty days prior to publication of a proposed leasing program in the Federal Register pursuant to paragraph (3) of this subsection, the Secretary shall submit a copy of such proposed program to the Governor of each affected State for review and comment. The Governor may solicit comments from those executives of local governments in his State which he, in his discretion, determines will be affected by the proposed program. If any comment by such Governor is received by the Secretary at least fifteen days prior to submission to the Congress pursuant to such paragraph (3) and includes a request for any modification of such proposed program, the Secretary shall reply in writing, granting or denying such request in whole or in part, or granting such request in such modified form as the Secretary considers appropriate, and stating his reasons therefor. All such correspondence between the Secretary and the Governor of any affected State, together with any additional information and data relating thereto, shall accompany such proposed program when it is submitted to the Congress.

"(3) Within nine months after the date of enactment of this section, the Secretary shall submit a proposed leasing program to the Congress, the Attorney General, and the Governors of affected States, and shall publish such proposed program in the Federal Register. Each Governor shall, upon request, submit a copy of the proposed leasing program to the executive of any local government affected by the proposed program.

"(d) (1) Within ninety days after the date of publication of a proposed leasing program, the Attorney General may, after consultation with the Federal Trade Commission, submit comments on the anticipated effects of such proposed program upon competition. Any State, local government, or other person may submit comments and recommendations as to any aspect of such proposed program.

"(2) At least sixty days prior to approving a proposed leasing program, the Secretary shall submit it to the President and the Congress, together with any comments received. Such submission shall indicate why any specific recommendation of the Attorney General or a State or local government was not accepted.

"(3) After the leasing program has been approved by the Secretary, or after eighteen months following the date of enactment of this section, whichever first occurs, no lease shall be issued unless it is for an area included in the approved leasing program and unless it contains provisions consistent with the approved leasing program, except that

leasing shall be permitted to continue until such program is approved and for so long thereafter as such program is under judicial or administrative review pursuant to the provisions of this Act.

"(e) The Secretary shall review the leasing program approved under this section at least once each year. He may revise and reapprove such program, at any time, and such revision and reapproval, except in the case of a revision which is not significant, shall be in the same manner as originally developed.

"(f) The Secretary shall, by regulation, establish procedures for—

"(1) receipt and consideration of nominations for any area to be offered for lease or to be excluded from leasing;

"(2) public notice of and participation in development of the leasing program;

"(3) review by State and local governments which may be impacted by the proposed leasing;

"(4) periodic consultation with State and local governments, oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in activity in or on the outer Continental Shelf, including those involved in fish and shellfish recovery, and recreational activities; and

"(5) consideration of the coastal zone management program being developed or administered by an affected coastal State pursuant to section 305 or section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454, 1455).

Such procedures shall be applicable to any significant revision or reapproval of the leasing program.

"(g) The Secretary may obtain from public sources, or purchase from private sources, any survey, data, report, or other information (including interpretations of such data, survey, report, or other information) which may be necessary to assist him in preparing any environmental impact statement and in making other evaluations required by this Act. Data of a classified nature provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. The Secretary shall maintain the confidentiality of all privileged or proprietary data or information for such period of time as is provided for in this Act, established by regulation, or agreed to by the parties.

"(h) The heads of all Federal departments and agencies shall provide the Secretary with any nonprivileged or nonproprietary information he requests to assist him in preparing the leasing program and may provide the Secretary with any privileged or proprietary information he requests to assist him in preparing the leasing program. Privileged or proprietary information provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. In addition, the Secretary shall utilize the existing capabilities and resources of such Federal departments and agencies by appropriate agreement.

"SEC. 19. COORDINATION AND CONSULTATION WITH AFFECTED STATES AND LOCAL GOVERNMENTS.—(a) Any Governor of any affected State or the executive of any affected local government in such State may

submit recommendations to the Secretary regarding the size, timing, or location of a proposed lease sale or with respect to a proposed development and production plan. Prior to submitting recommendations to the Secretary, the executive of any affected local government in any affected State must forward his recommendations to the Governor of such State.

“(b) Such recommendations shall be submitted within sixty days after notice of such proposed lease sale or after receipt of such development and production plan.

“(c) The Secretary shall accept recommendations of the Governor and may accept recommendations of the executive of any affected local government if he determines, after having provided the opportunity for consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. For purposes of this subsection, a determination of the national interest shall be based on the desirability of obtaining oil and gas supplies in a balanced manner and on the findings, purposes, and policies of this Act. The Secretary shall communicate to the Governor, in writing, the reasons for his determination to accept or reject such Governor's recommendations, or to implement any alternative means identified in consultation with the Governor to provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State.

“(d) The Secretary's determination that recommendations provide, or do not provide, for a reasonable balance between the national interest and the well-being of the citizens of the affected State shall be final and shall not, alone, be a basis for invalidation of a proposed lease sale or a proposed development and production plan in any suit or judicial review pursuant to section 23 of this Act, unless found to be arbitrary or capricious.

“(e) The Secretary is authorized to enter into cooperative agreements with affected States for purposes which are consistent with this Act and other applicable Federal law. Such agreements may include, but need not be limited to, the sharing of information (in accordance with the provisions of section 26 of this Act), the joint utilization of available expertise, the facilitating of permitting procedures, joint planning and review, and the formation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws, regulations, and stipulations relevant to outer Continental Shelf operations both onshore and offshore.

“SEC. 20. ENVIRONMENTAL STUDIES.—(a) (1) The Secretary shall conduct a study of any area or region included in any oil and gas lease sale in order to establish information needed for assessment and management of environmental impacts on the human, marine, and coastal environments of the outer Continental Shelf and the coastal areas which may be affected by oil and gas development in such area or region.

“(2) Each study required by paragraph (1) of this subsection shall be commenced not later than six months after the date of enactment of this section with respect to any area or region where a lease sale has been held or announced by publication of a notice of proposed lease sale before such date of enactment, and not later than six months

prior to the holding of a lease sale with respect to any area or region where no lease sale has been held or scheduled before such date of enactment. The Secretary may utilize information collected in any study prior to such date of enactment.

"(3) In addition to developing environmental information, any study of an area or region, to the extent practicable, shall be designed to predict impacts on the marine biota which may result from chronic low level pollution or large spills associated with outer Continental Shelf production, from the introduction of drill cuttings and drilling muds in the area, and from the laying of pipe to serve the offshore production area, and the impacts of development offshore on the affected and coastal areas.

"(b) Subsequent to the leasing and developing of any area or region, the Secretary shall conduct such additional studies to establish environmental information as he deems necessary and shall monitor the human, marine, and coastal environments of such area or region in a manner designed to provide time-series and data trend information which can be used for comparison with any previously collected data for the purpose of identifying any significant changes in the quality and productivity of such environments, for establishing trends in the areas studied and monitored, and for designing experiments to identify the causes of such changes.

"(c) The Secretary shall, by regulation, establish procedures for carrying out his duties under this section, and shall plan and carry out such duties in full cooperation with affected States. To the extent that other Federal agencies have prepared environmental impact statements, are conducting studies, or are monitoring the affected human, marine, or coastal environment, the Secretary may utilize the information derived therefrom in lieu of directly conducting such activities. The Secretary may also utilize information obtained from any State or local government, or from any person, for the purposes of this section. For the purpose of carrying out his responsibilities under this section, the Secretary may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of any Federal, State, or local government agency.

"(d) The Secretary shall consider available relevant environmental information in making decisions (including those relating to exploration plans, drilling permits, and development and production plans), in developing appropriate regulations and lease conditions, and in issuing operating orders.

"(e) As soon as practicable after the end of each fiscal year, the Secretary shall submit to the Congress and make available to the general public an assessment of the cumulative effect of activities conducted under this Act on the human, marine, and coastal environments.

"(f) In executing his responsibilities under this section, the Secretary shall, to the maximum extent practicable, enter into appropriate arrangements to utilize on a reimbursable basis the capabilities of the Department of Commerce. In carrying out such arrangements, the Secretary of Commerce is authorized to enter into contracts or grants with any person, organization, or entity with funds appropriated to the Secretary of the Interior pursuant to this Act.

*"SEC. 21. SAFETY REGULATIONS.—(a) Upon the date of enactment of this section, the Secretary and the Secretary of the Department in which the Coast Guard is operating shall, in consultation with each other and, as appropriate, with the heads of other Federal departments and agencies, promptly commence a joint study of the adequacy of existing safety and health regulations and of the technology, equipment, and techniques available for the exploration, development, and production of the minerals of the outer Continental Shelf. The results of such study shall be submitted to the President who shall submit a plan to the Congress of his proposals to promote safety and health in the exploration, development, and production of the minerals of the outer Continental Shelf.*

*"(b) In exercising their respective responsibilities for the artificial islands, installations, and other devices referred to in section 4(a) (1) of this Act, the Secretary, and the Secretary of the Department in which the Coast Guard is operating, shall require, on all new drilling and production operations and, wherever practicable, on existing operations, the use of the best available and safest technologies which the Secretary determines to be economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment, except where the Secretary determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.*

*"(c) The Secretary of the Department in which the Coast Guard is operating shall promulgate regulations or standards applying to unregulated hazardous working conditions related to activities on the outer Continental Shelf when he determines such regulations or standards are necessary. The Secretary of the Department in which the Coast Guard is operating may from time to time modify any regulations, interim or final, dealing with hazardous working conditions on the outer Continental Shelf.*

*"(d) Nothing in this Act shall affect the authority provided by law to the Secretary of Labor for the protection of occupational safety and health, the authority provided by law to the Administrator of the Environmental Protection Agency for the protection of the environment, or the authority provided by law to the Secretary of Transportation with respect to pipeline safety.*

*"(e) The Secretary of Commerce, in cooperation with the Secretary of the Department in which the Coast Guard is operating, and the Director of the National Institutes of Occupational Safety and Health, shall conduct studies of underwater diving techniques and equipment suitable for protection of human safety and improvement of diver performance. Such studies shall include, but need not be limited to, decompression and excursion table development and improvement and all aspects of diver physiological restraints and protective gear for exposure to hostile environments.*

*"(f) (1) In administering the provisions of this section, the Secretary shall consult and coordinate with the heads of other appropriate Federal departments and agencies for purposes of assuring that, to the maximum extent practicable, inconsistent or duplicative requirements are not imposed.*

"(2) The Secretary shall make available to any interested person a compilation of all safety and other regulations which are prepared and promulgated by any Federal department or agency and applicable to activities on the outer Continental Shelf. Such compilation shall be revised and updated annually.

SEC. 22. ENFORCEMENT.—(a) The Secretary, the Secretary of the Department in which the Coast Guard is operating, and the Secretary of the Army shall enforce safety and environmental regulations promulgated pursuant to this Act. Each such Federal department may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of other Federal departments and agencies for the enforcement of their respective regulations.

"(b) It shall be the duty of any holder of a lease or permit under this Act to—

"(1) maintain all places of employment within the lease area or within the area covered by such permit in compliance with occupational safety and health standards and, in addition, free from recognized hazards to employees of the lease holder or permit holder or of any contractor or subcontractor operating within such lease area or within the area covered by such permit on the outer Continental Shelf;

"(2) maintain all operations within such lease area or within the area covered by such permit in compliance with regulations intended to protect persons, property, and the environment on the outer Continental Shelf; and

"(3) allow prompt access, at the site of any operation subject to safety regulations, to any inspector, and to provide such documents and records which are pertinent to occupational or public health, safety, or environmental protection, as may be requested.

"(c) The Secretary and the Secretary of the Department in which the Coast Guard is operating shall individually, or jointly if they so agree, promulgate regulations to provide for—

"(1) scheduled onsite inspection, at least once a year, of each facility on the outer Continental Shelf which is subject to any environmental or safety regulation promulgated pursuant to this Act, which inspection shall include all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents; and

"(2) periodic onsite inspection without advance notice to the operator of such facility to assure compliance with such environmental or safety regulations.

"(d) (1) The Secretary or the Secretary of the Department in which the Coast Guard is operating shall make an investigation and public report on each major fire and each major oil spillage occurring as a result of operations conducted pursuant to this Act, and may, in his discretion, make an investigation and report of lesser oil spillages. For purposes of this subsection, a major oil spillage is any spillage in one instance of more than two hundred barrels of oil during a period of thirty days. All holders of leases or permits issued or maintained under this Act shall cooperate with the appropriate Secretary in the course of any such investigation.

"(2) The Secretary or the Secretary of the Department in which the Coast Guard is operating shall make an investigation and public

report on any death or serious injury occurring as a result of operations conducted pursuant to this Act, and may, in his discretion, make an investigation and report of any injury. For purposes of this subsection, a serious injury is one resulting in substantial impairment of any bodily unit or function. All holders of leases or permits issued or maintained under this Act shall cooperate with the appropriate Secretary in the course of any such investigation.

"(e) The Secretary, or, in the case of occupational safety and health, the Secretary of the Department in which the Coast Guard is operating, may review any allegation from any person of the existence of a violation of a safety regulation issued under this Act.

"(f) In any investigation conducted pursuant to this section, the Secretary or the Secretary of the Department in which the Coast Guard is operating shall have power to summon witnesses and to require the production of books, papers, documents, and any other evidence. Attendance of witnesses or the production of books, papers, documents, or any other evidence shall be compelled by a similar process as in the district courts of the United States. Such Secretary, or his designee, shall administer all necessary oaths to any witnesses summoned before such investigation.

"(g) The Secretary shall, after consultation with the Secretary of the Department in which the Coast Guard is operating, include in his annual report to the Congress required by section 15 of this Act the number of violations of safety regulations reported or alleged, any investigations undertaken, the results of such investigations, and any administrative or judicial action taken as a result of such investigations, and the results of the diving studies conducted under section 21 (e) of this Act.

**"SEC. 23. CITIZEN SUITS, COURT JURISDICTION, AND JUDICIAL REVIEW.—**(a) (1) Except as provided in this section, any person having a valid legal interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this Act against any person, including the United States, and any other government instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution) for any alleged violation of any provision of this Act or any regulation promulgated under this Act, or of the terms of any permit or lease issued by the Secretary under this Act.

"(2) Except as provided in paragraph (3) of this subsection, no action may be commenced under subsection (a) (1) of this section—

"(A) prior to sixty days after the plaintiff has given notice of the alleged violation, in writing under oath, to the Secretary and any other appropriate Federal official, to the State in which the violation allegedly occurred or is occurring, and to any alleged violator; or

"(B) if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States or a State with respect to such matter, but in any such action in a court of the United States any person having a legal interest which is or may be adversely affected may intervene as a matter of right.

"(3) An action may be brought under this subsection immediately after notification of the alleged violation in any case in which the al-

*leged violation constitutes an imminent threat to the public health or safety or would immediately affect a legal interest of the plaintiff.*

*"(4) In any action commenced pursuant to this section, the Attorney General, upon the request of the Secretary or any other appropriate Federal official, may intervene as a matter of right.*

*"(5) A court, in issuing any final order in any action brought pursuant to subsection (a) (1) or subsection (c) of this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any party, whenever such court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in a sufficient amount to compensate for any loss or damage suffered, in accordance with the Federal Rules of Civil Procedure.*

*"(6) Except as provided in subsection (c) of this section, all suits challenging actions or decisions allegedly in violation of, or seeking enforcement of, the provisions of this Act, or any regulation promulgated under this Act, or the terms of any permit or lease issued by the Secretary under this Act, shall be undertaken in accordance with the procedures described in this subsection. Nothing in this section shall restrict any right which any person or class of persons may have under any other Act or common law to seek appropriate relief.*

*"(b) (1) Except as provided in subsection (c) of this section, the district courts of the United States shall have jurisdiction of cases and controversies arising out of, or in connection with (A) any operation conducted on the outer Continental Shelf which involves exploration, development, or production of the minerals, of the subsoil and seabed of the outer Continental Shelf, or which involves rights to such minerals, or (B) the cancellation, suspension, or termination of a lease or permit under this Act. Proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the State nearest the place the cause of action arose.*

*"(2) Any resident of the United States who is injured in any manner through the failure of any operator to comply with any rule, regulation, order, or permit issued pursuant to this Act may bring an action for damages (including reasonable attorney and expert witness fees) only in the judicial district having jurisdiction under paragraph (1) of this subsection.*

*"(c) (1) Any action of the Secretary to approve a leasing program pursuant to section 18 of this Act shall be subject to judicial review only in the United States Court of Appeals for the District of Columbia.*

*"(2) Any action of the Secretary to approve, require modification of, or disapprove any exploration plan or any development and production plan under this Act shall be subject to judicial review only in a United States court of appeals for a circuit in which an affected State is located.*

*"(3) The judicial review specified in paragraphs (1) and (2) of this subsection shall be available only to a person who (A) participated in the administrative proceedings related to the actions specified in such paragraphs, (B) is adversely affected or aggrieved by such action, (C) files a petition for review of the Secretary's action within*

sixty days after the date of such action, and (D) promptly transmits copies of the petition to the Secretary and to the Attorney General.

"(4) Any action of the Secretary specified in paragraph (1) or (2) shall only be subject to review pursuant to the provisions of this subsection, and shall be specifically excluded from citizen suits which are permitted pursuant to subsection (a) of this section.

"(5) The Secretary shall file in the appropriate court the record of any public hearings required by this Act and any additional information upon which the Secretary based his decision, as required by section 2112 of title 28, United States Code. Specific objections to the action of the Secretary shall be considered by the court only if the issues upon which such objections are based have been submitted to the Secretary during the administrative proceedings related to the actions involved.

"(6) The court of appeals conducting a proceeding pursuant to this subsection shall consider the matter under review solely on the record made before the Secretary. The findings of the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

"(7) Upon the filing of the record with the court, pursuant to paragraph (5), the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari.

"(d) Except as to causes of action which the court considers of greater importance, any action under this section shall take precedence on the docket over all other causes of action and shall be set for hearing at the earliest practical date and expedited in every way.

"SEC. 24. REMEDIES AND PENALTIES.—(a) At the request of the Secretary, the Secretary of the Army, or the Secretary of the Department in which the Coast Guard is operating, the Attorney General or a United States attorney shall institute a civil action in the district court of the United States for the district in which the affected operation is located for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of this Act, any regulation or order issued under this Act, or any term of a lease, license, or permit issued pursuant to this Act.

"(b) If any person fails to comply with any provision of this Act, or any term of a lease, license, or permit issued pursuant to this Act, or any regulation or order issued under this Act, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than \$10,000 for each day of the continuance of such failure. The Secretary may assess, collect, and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing.

"(c) Any person who knowingly and willfully (1) violates any provision of this Act, any term of a lease, license, or permit issued pursuant to this Act, or any regulation or order issued under the authority of this Act designed to protect health, safety, or the environment or conserve natural resources, (2) makes any false statement,

representation, or certification in any application, record, report, or other document filed or required to be maintained under this Act, (3) falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this Act, or (4) reveals any data or information required to be kept confidential by this Act shall, upon conviction, be punished by a fine of not more than \$100,000, or by imprisonment for not more than ten years, or both. Each day that a violation under clause (1) of this subsection continues, or each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in clause (3) of this subsection, shall constitute a separate violation.

"(d) Whenever a corporation or other entity is subject to prosecution under subsection (c) of this section, any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under subsection (c) of this section.

"(e) The remedies and penalties prescribed in this Act shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this Act shall be in addition to any other remedies and penalties afforded by any other law or regulation.

"SEC. 25. OIL AND GAS DEVELOPMENT AND PRODUCTION.—(a) (1) Prior to development and production pursuant to an oil and gas lease issued after the date of enactment of this section in any area of the outer Continental Shelf, other than the Gulf of Mexico, or issued or maintained prior to such date of enactment in any area of the outer Continental Shelf, other than the Gulf of Mexico, with respect to which no oil or gas has been discovered in paying quantities prior to such date of enactment, the lessee shall submit a development and production plan (hereinafter in this section referred to as a 'plan') to the Secretary, for approval pursuant to this section.

"(2) A plan shall be accompanied by a statement describing all facilities and operations, other than those on the outer Continental Shelf, proposed by the lessee and known by him (whether or not owned or operated by such lessee) which will be constructed or utilized in the development and production of oil or gas from the lease area, including the location and site of such facilities and operations, the land, labor, material, and energy requirements associated with such facilities and operations, and all environmental and safety safeguards to be implemented.

"(3) Except for any privileged or proprietary information (as such term is defined in regulations issued by the Secretary), the Secretary, within ten days after receipt of a plan and statement, shall (A) submit such plan and statement to the Governor of any affected State, and, upon request, to the executive of any affected local government, and (B) make such plan and statement available to any appropriate interstate regional entity and the public.

"(b) After the date of enactment of this section, no oil and gas lease may be issued pursuant to this Act in any region of the outer Continental Shelf, other than the Gulf of Mexico, unless such lease requires

that development and production activities be carried out in accordance with a plan which complies with the requirements of this section.

"(c) A plan may apply to more than one oil and gas lease, and shall set forth, in the degree of detail established by regulations issued by the Secretary—

"(1) the specific work to be performed;

"(2) a description of all facilities and operations located on the outer Continental Shelf which are proposed by the lessee or known by him (whether or not owned or operated by such lessee) to be directly related to the proposed development, including the location and size of such facilities and operations, and the land, labor, material, and energy requirements associated with such facilities and operations;

"(3) the environmental safeguards to be implemented on the outer Continental Shelf and how such safeguards are to be implemented;

"(4) all safety standards to be met and how such standards are to be met;

"(5) an expected rate of development and production and a time schedule for performance; and

"(6) such other relevant information as the Secretary may by regulation require.

"(d) The Secretary shall not grant any license or permit for any activity described in detail in a plan and affecting any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), unless the State concurs or is conclusively presumed to concur with the consistency certification accompanying such plan pursuant to section 307(c)(3)(B)(i) or (ii) of such Act, or the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of such Act.

"(e) (1) At least once the Secretary shall declare the approval of a development and production plan in any area or region (as defined by the Secretary) of the outer Continental Shelf, other than the Gulf of Mexico, to be a major Federal action.

"(2) The Secretary may require lessees of tracts for which development and production plans have not been approved, to submit preliminary or final plans for their leases, prior to or immediately after a determination by the Secretary that the procedures under the National Environmental Policy Act of 1969 shall commence.

"(f) If approval of a development and production plan is found to be a major Federal action, the Secretary shall transmit the draft environmental impact statement to the Governor of any affected State, and upon request, to the executive of any local government, and shall make such draft available to any appropriate interstate regional entity and the public.

"(g) If approval of a development and production plan is not found to be a major Federal action, the Governor of any affected State and the executive of any affected local government shall have sixty days from the date of receipt of the plan from the Secretary to submit comments and recommendations. Prior to submitting recommendations to

*the Secretary, the executive of any affected local government must forward his recommendations to the Governor of his State. Such comments and recommendations shall be made available to the public upon request. In addition, any interested person may submit comments and recommendations.*

*"(h) (1) After reviewing the record of any public hearing held with respect to the approval of a plan pursuant to the National Environmental Policy Act of 1969 or the comments and recommendations submitted under subsection (g) of this section, the Secretary shall, within sixty days after the release of the final environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 in accordance with subsection (e) of this section, or sixty days after the period provided for comment under subsection (g) of this section, approve, disapprove, or require modifications of the plan. The Secretary shall require modification of a plan if he determines that the lessee has failed to make adequate provision in such plan for safe operations on the lease area or for protection of the human, marine, or coastal environment, including compliance with the regulations prescribed by the Secretary pursuant to paragraph (8) of section 5(a) of this Act. Any modification required by the Secretary which involves activities for which a Federal license or permit is required and which affects any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) must receive concurrence by such State with respect to the consistency certification accompanying such plan pursuant to section 307(c) (3) (B) (i) or (ii) of such Act unless the Secretary of Commerce makes the finding authorized by section 307(c) (3) (B) (iii) of such Act. The Secretary shall disapprove a plan—*

*"(A) if the lessee fails to demonstrate that he can comply with the requirements of this Act or other applicable Federal law, including the regulations prescribed by the Secretary pursuant to paragraph (8) of section 5(a) of this Act;*

*"(B) if any of the activities described in detail in the plan for which a Federal license or permit is required and which affects any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) do not receive concurrence by such State with respect to the consistency certification accompanying such plan pursuant to section 307(c) (3) (B) (i) or (ii) of such Act and the Secretary of Commerce does not make the finding authorized by section 307(c) (3) (B) (iii) of such Act;*

*"(C) if operations threaten national security or national defense; or*

*"(D) if the Secretary determines, because of exceptional geological conditions in the lease areas, exceptional resource values in the marine or coastal environment, or other exceptional circumstances, that (i) implementation of the plan would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased*

or not leased), to the national security or defense, or to the marine, coastal or human environments, (ii) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time, and (iii) the advantages of disapproving the plan outweigh the advantages of development and production.

"(2) (A) If a plan is disapproved—

"(i) under subparagraph (A) of paragraph (1); or

"(ii) under subparagraph (B) of paragraph (1) with respect to a lease issued after approval of a coastal zone management program pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1455),

the lessee shall not be entitled to compensation because of such disapproval.

"(B) If a plan is disapproved—

"(i) under subparagraph (C) or (D) of paragraph (1); or

"(ii) under subparagraph (B) of paragraph (1) with respect to a lease issued before approval of a coastal zone management program pursuant to the Coastal Zone Management Act of 1972, and such approval occurs after the lessee has submitted a plan to the Secretary,

the term of the lease shall be duly extended, and at any time within five years after such disapproval, the lessee may reapply for approval of the same or a modified plan, and the Secretary shall approve, disapprove, or require modifications of such plan in accordance with this subsection.

"(C) Upon expiration of the five-year period described in subparagraph (B) of this paragraph, or, in the Secretary's discretion, at an earlier time upon request of a lessee, if the Secretary has not approved a plan, the Secretary shall cancel the lease and the lessee shall be entitled to receive compensation in accordance with section 5(a)(2)(C) of this Act. The Secretary may, at any time within the five-year period described in subparagraph (B) of this paragraph, require the lessee to submit a development and production plan for approval, disapproval, or modification. If the lessee fails to submit a required plan expeditiously and in good faith, the Secretary shall find that the lessee has not been duly diligent in pursuing his obligations under the lease, and shall immediately initiate procedures to cancel such lease, without compensation, under the provisions of section 5(c) of this Act.

"(3) The Secretary shall, from time to time, review each plan approved under this section. Such review shall be based upon changes in available information and other onshore or offshore conditions affecting or impacted by development and production pursuant to such plan. If the review indicates that the plan should be revised to meet the requirements of this subsection, the Secretary shall require such revision.

"(i) The Secretary may approve any revision of an approved plan proposed by the lessee if he determines that such revision will lead to greater recovery of oil and natural gas, improve the efficiency, safety, and environmental protection of the recovery operation, is the only means available to avoid substantial economic hardship to the lessee,

or is otherwise not inconsistent with the provisions of this Act, to the extent such revision is consistent with protection of the human, marine, and coastal environments. Any revision of an approved plan which the Secretary determines is significant shall be reviewed in accordance with subsections (d) through (f) of this section.

"(j) Whenever the owner of any lease fails to submit a plan in accordance with regulations issued under this section, or fails to comply with an approved plan, the lease may be canceled in accordance with sections 5 (c) and (d). Termination of a lease because of failure to comply with an approved plan, including required modifications or revisions, shall not entitle a lessee to any compensation.

"(k) If any development and production plan submitted to the Secretary pursuant to this section provides for the production and transportation of natural gas, the lessee shall contemporaneously submit to the Federal Energy Regulatory Commission that portion of such plan which relates to production of natural gas and the facilities for transportation of natural gas. The Secretary and the Federal Energy Regulatory Commission shall agree as to which of them shall prepare an environmental impact statement pursuant to the National Environmental Policy Act of 1969 applicable to such portion of such plan, or conduct studies as to the effect on the environment of implementing it. Thereafter, the findings and recommendations by the agency preparing such environmental impact statement or conducting such studies pursuant to such agreement shall be adopted by the other agency, and such other agency shall not independently prepare another environmental impact statement or duplicate such studies with respect to such portion of such plan, but the Federal Energy Regulatory Commission, in connection with its review of an application for a certificate of public convenience and necessity applicable to such transportation facilities pursuant to section 7 of the Natural Gas Act (15 U.S.C. 717), may prepare such environmental studies or statement relevant to certification of such transportation facilities as have not been covered by an environmental impact statement or studies prepared by the Secretary. The Secretary, in consultation with the Federal Energy Regulatory Commission, shall promulgate rules to implement this subsection, but the Federal Energy Regulatory Commission shall retain sole authority with respect to rules and procedures applicable to the filing of any application with the Commission and to all aspects of the Commission's review of, and action on, any such application.

"(l) The Secretary may require the provisions of this section to apply to an oil and gas lease issued or maintained under this Act, which is located in that area of the Gulf of Mexico which is adjacent to the State of Florida, as determined pursuant to section 4(a)(2) of this Act.

"SEC. 26. OUTER CONTINENTAL SHELF OIL AND GAS INFORMATION PROGRAM.—(a) (1) (A) Any lessee or permittee conducting any exploration for, or development or production of, oil or gas pursuant to this Act shall provide the Secretary access to all data and information (including processed, analyzed, and interpreted information) obtained from such activity and shall provide copies of such data and information as the Secretary may request. Such data and information shall be

*provided in accordance with regulations which the Secretary shall prescribe.*

*"(B) If an interpretation provided pursuant to subparagraph (A) of this paragraph is made in good faith by the lessee or permittee, such lessee or permittee shall not be held responsible for any consequence of the use of or reliance upon such interpretation.*

*"(C) Whenever any data and information is provided to the Secretary, pursuant to subparagraph (A) of this paragraph—*

*"(i) by a lessee, in the form and manner of processing which is utilized by such lessee in the normal conduct of his business, the Secretary shall pay the reasonable cost of reproducing such data and information;*

*"(ii) by a lessee, in such other form and manner of processing as the Secretary may request, the Secretary shall pay the reasonable cost of processing and reproducing such data and information;*

*"(iii) by a permittee, in the form and manner of processing which is utilized by such permittee in the normal conduct of his business, the Secretary shall pay such permittee the reasonable cost of reproducing such data and information for the Secretary and shall pay at the lowest rate available to any purchaser for processing such data and information the costs attributable to such processing; and*

*"(iv) by a permittee, in such other form and manner of processing as the Secretary may request, the Secretary shall pay such permittee the reasonable cost of processing and reproducing such data and information for the Secretary,*

*pursuant to such regulations as he may prescribe.*

*"(2) Each Federal department and agency shall provide the Secretary with any data obtained by such Federal department or agency pursuant to section 11 of this Act, and any other information which may be necessary or useful to assist him in carrying out the provisions of this Act.*

*"(b) (1) Data and information provided to the Secretary pursuant to subsection (a) of this section shall be processed, analyzed, and interpreted by the Secretary for purposes of carrying out his duties under this Act.*

*"(2) As soon as practicable after information provided to the Secretary pursuant to subsection (a) of this section is processed, analyzed, and interpreted, the Secretary shall make available to the affected States, and upon request, to any affected local government, a summary of data designed to assist them in planning for the onshore impacts of possible oil and gas development and production. Such summary shall include estimates of (A) the oil and gas reserves in areas leased or to be leased, (B) the size and timing of development if and when oil or gas, or both, is found, (C) the location of pipelines, and (D) the general location and nature of onshore facilities.*

*"(c) The Secretary shall prescribe regulations to (1) assure that the confidentiality of privileged or proprietary information received by the Secretary under this section will be maintained, and (2) set forth the time periods and conditions which shall be applicable to the*

release of such information. Such regulations shall include a provision that no such information will be transmitted to any affected State unless the lessee, or the permittee and all persons to whom such permittee has sold such information under promise of confidentiality, agree to such transmittal.

"(d) (1) The Secretary shall transmit to any affected State—

"(A) an index, and upon request copies of, all relevant actual or proposed programs, plans, reports, environmental impact statements, tract nominations (including negative nominations) and other lease sale information, any similar type of relevant information, and all modifications and revisions thereof and comments thereon, prepared or obtained by the Secretary pursuant to this Act, but no information transmitted by the Secretary under this subsection shall identify any particular tract with the name or names of any particular party so as not to compromise the competitive position of any party or parties participating in the nominations;

"(B) (i) the summary of data prepared by the Secretary pursuant to subsection (b) (2) of this section, and (ii) any other processed, analyzed, or interpreted data prepared by the Secretary pursuant to subsection (b) (1) of this section, unless the Secretary determines that transmittal of such data prepared pursuant to such subsection (b) (1) would unduly damage the competitive position of the lessee or permittee who provided the Secretary with the information which the Secretary had processed, analyzed, or interpreted; and

"(C) any relevant information received by the Secretary pursuant to subsection (a) of this section, subject to any applicable requirements as to confidentiality which are set forth in regulations prescribed under subsection (c) of this section.

"(2) Notwithstanding the provisions of any regulation required pursuant to the second sentence of subsection (c) of this section, the Governor of any affected State may designate an appropriate State official to inspect, at a regional location which the Secretary shall designate, any privileged information received by the Secretary regarding any activity adjacent to such State, except that no such inspection shall take place prior to the sale of a lease covering the area in which such activity was conducted. Knowledge obtained by such State during such inspection shall be subject to applicable requirements as to confidentiality which are set forth in regulations prescribed under subsection (c) of this section.

"(e) Prior to transmitting any privileged information to any State, or granting such State access to such information, the Secretary shall enter into a written agreement with the Governor of such State in which such State agrees, as a condition precedent to receiving or being granted access to such information, to waive the defenses set forth in subsection (f) (2) of this section, and to hold the United States harmless from any violations of the regulations prescribed pursuant to subsection (c) that the State or its employees may commit.

"(f) (1) Whenever any employee of the Federal Government or of any State reveals information in violation of the regulations pre-

scribed pursuant to subsection (c) of this section, the lessee or permittee who supplied such information to the Secretary or to any other Federal official, and any person to whom such lessee or permittee has sold such information under promise of confidentiality, may commence a civil action for damages in the appropriate district court of the United States against the Federal Government or such State, as the case may be.

"(2) In any action commenced against the Federal Government or a State pursuant to paragraph (1) of this subsection, the Federal Government or such State, as the case may be, may not raise as a defense (A) any claim of sovereign immunity, or (B) any claim that the employee who revealed the privileged information which is the basis of such suit was acting outside the scope of his employment in revealing such information.

"(g) Any provision of State or local law which provides for public access to any privileged information received or obtained by any person pursuant to this Act is expressly preempted by the provisions of this section, to the extent that it applies to such information.

"(h) If the Secretary finds that any State cannot or does not comply with the regulations issued under subsection (c) of this section, he shall thereafter withhold transmittal and deny inspection of privileged information to such State until he finds that such State can and will comply with such regulations.

**"SEC. 27. FEDERAL PURCHASE AND DISPOSITION OF OIL AND GAS.—**

(a) (1) Except as may be necessary to comply with the provisions of sections 6 and 7 of this Act, all royalties or net profit shares, or both, accruing to the United States under any oil and gas lease issued or maintained in accordance with this Act, shall, on demand of the Secretary, be paid in oil or gas.

"(2) The United States shall have the right to purchase not to exceed 16 $\frac{2}{3}$  per centum by volume of the oil and gas produced pursuant to a lease issued or maintained in accordance with this Act, at the regulated price, or, if no regulated price applies, at the fair market value at the well head of the oil and gas saved, removed, or sold, except that any oil or gas obtained by the United States as royalty or net profit share shall be credited against the amount that may be purchased under this subsection.

"(3) Title to any royalty, net profit share, or purchased oil or gas may be transferred, upon request, by the Secretary to the Secretary of Defense, to the Administrator of the General Services Administration, or to the Secretary of Energy, for disposal within the Federal Government.

"(b) (1) The Secretary, except as provided in this subsection, may offer to the public and sell by competitive bidding for not more than its regulated price, or, if no regulated price applies, not less than its fair market value, any part of the oil (A) obtained by the United States pursuant to any lease as royalty or net profit share, or (B) purchased by the United States pursuant to subsection (a) (2) of this section.

"(2) Whenever, after consultation with the Secretary of Energy, the Secretary determines that small refiners do not have access to adequate supplies of oil at equitable prices, the Secretary may dispose of any oil which is taken as a royalty or net profit share accruing or re-

served to the United States pursuant to any lease issued or maintained under this Act, or purchased by the United States pursuant to subsection (a) (2) of this section, by conducting a lottery for the sale of such oil, or may equitably allocate such oil among the competitors for the purchase of such oil, at the regulated price, or if no regulated price applies, at its fair market value. The Secretary shall limit participation in any allocation or lottery sale to assure such access and shall publish notice of such allocation or sale, and the terms thereof, at least thirty days in advance. Such notice shall include qualifications for participation, the amount of oil to be sold, and any limitation in the amount of oil which any participant may be entitled to purchase.

"(3) The Secretary may only sell or otherwise dispose of oil described in paragraph (1) of this subsection in accordance with any provision of law, or regulations issued in accordance with such provisions, which provide for the Secretary of Energy to allocate, transfer, exchange, or sell oil in amounts or at prices determined by such provision of law or regulations.

"(c) (1) Except as provided in paragraph (2) of this subsection, the Secretary, pursuant to such terms as he determines, may offer to the public and sell by competitive bidding for not more than its regulated price, or, if no regulated price applies, not less than its fair market value any part of the gas (A) obtained by the United States pursuant to a lease as royalty or net profit share, or (B) purchased by the United States pursuant to subsection (a) (2) of this section.

"(2) Whenever, after consultation with and advice from the Secretary of Energy, the Federal Energy Regulatory Commission determines that an emergency shortage of natural gas is threatening to cause severe economic or social dislocation in any region of the United States and that such region can be serviced in a practical, feasible, and efficient manner by royalty, net profit share, or purchased gas obtained pursuant to the provisions of this section, the Secretary of the Interior may allocate or conduct a lottery for the sale of such gas, and shall limit participation in any allocation or lottery sale of such gas to any person servicing such region, but he shall not sell any such gas for more than its regulated price, or, if no regulated price applies, less than its fair market value. Prior to selling or allocating any gas pursuant to this subsection, the Secretary shall consult with the Federal Energy Regulatory Commission.

"(d) The lessee shall take any Federal oil or gas for which no acceptable bids are received, as determined by the Secretary, and which is not transferred pursuant to subsection (a) (3) of this section, and shall pay to the United States a cash amount equal to the regulated price, or, if no regulated price applies, the fair market value of the oil or gas so obtained.

"(e) As used in this section—

"(1) the term 'regulated price' means the highest price—

"(A) at which oil may be sold pursuant to the Emergency Petroleum Allocation Act of 1973 and any rule or order issued under such Act;

"(B) at which natural gas may be sold to natural-gas companies pursuant to the Natural Gas Act, any other Act, regulations governing natural gas pricing, or any rule or order issued under any such Act or any such regulations; or

"(C) at which either Federal oil or gas may be sold under any other provision of law or rule or order thereunder which sets a price (or manner for determining a price) for oil or gas; and

"(2) the term 'small refiner' has the meaning given such term by Small Business Administration Standards 128.3-8 (d) and (g), as in effect on the date of enactment of this section or as thereafter revised or amended.

"(f) Nothing in this section shall prohibit the right of the United States to purchase any oil or gas produced on the outer Continental Shelf as provided by section 12(b) of this Act.

"SEC. 28. LIMITATION ON EXPORT.—(a) Except as provided in subsection (d) of this section, any oil or gas produced from the outer Continental Shelf shall be subject to the requirements and provisions of the Export Administration Act of 1969 (50 App. U.S.C. 2401 et seq.).

"(b) Before any oil or gas subject to this section may be exported under the requirements and provisions of the Export Administration Act of 1969, the President shall make and publish an express finding that such exports will not increase reliance on imported oil or gas, are in the national interest, and are in accord with the provisions of the Export Administration Act of 1969.

"(c) The President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within such time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to such Presidential findings shall cease.

"(d) The provisions of this section shall not apply to any oil or gas which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of a foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, or which is exchanged or exported pursuant to an existing international agreement.

"SEC. 29. RESTRICTIONS ON EMPLOYMENT.—No full-time officer or employee of the Department of the Interior who directly or indirectly discharged duties or responsibilities under this Act, and who was at any time during the twelve months preceding the termination of his employment with the Department compensated under the Executive Schedule or compensated at or above the annual rate of basic pay for grade GS-16 of the General Schedule shall—

"(1) within two years after his employment with the Department has ceased—

"(A) knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before;

"(B) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to; or

"(C) knowingly aid or assist in representing any other person (except the United States) in any formal or informal appearance before,

any department, agency, or court of the United States, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, regulation, order, lease, permit, rulemaking, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility or in which he participated personally and substantially as an officer or employee; or

"(2) within one year after his employment with the Department has ceased—

"(A) knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before; or

"(B) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to, the Department of the Interior, or any officer or employee thereof, in connection with any judicial, rulemaking, regulation, order, lease, permit, regulation, or other particular matter which is pending before the Department of the Interior or in which the Department has a direct and substantial interest.

"SEC. 30. DOCUMENTATION, REGISTRY, AND MANNING REQUIREMENTS.—

(a) Within six months after the date of enactment of this section, the Secretary of the Department in which the Coast Guard is operating shall issue regulations which require that any vessel, rig, platform, or other vehicle or structure—

"(1) which is used at any time after the one-year period beginning on the effective date of such regulations for activities pursuant to this Act and which is built or rebuilt at any time after such one-year period, when required to be documented by the laws of the United States, be documented under the laws of the United States;

"(2) which is used for activities pursuant to this Act, comply, except as provided in subsection (b), with such minimum standards of design, construction, alteration, and repair as the Secretary or the Secretary of the Department in which the Coast Guard is operating establishes; and

"(3) which is used at any time after the one-year period beginning on the effective date of such regulations for activities pursuant to this Act, be manned or crewed, except as provided in subsection (c), by citizens of the United States or aliens lawfully admitted to the United States for permanent residence.

"(b) The regulations issued under subsection (a) (2) of this section shall not apply to any vessel, rig, platform, or other vehicle or structure built prior to the date of enactment of this section, until such time after such date as such vehicle or structure is rebuilt.

"(c) The regulations issued under subsection (a) (3) of this section shall not apply—

"(1) to any vessel, rig, platform, or other vehicle or structure if—

"(A) specific contractual provisions or national registry manning requirements in effect on the date of enactment of this section provide to the contrary;

"(B) there are not a sufficient number of citizens of the United States, or aliens lawfully admitted to the United States for permanent residence, qualified and available for such work; or

"(C) the President makes a specific finding, with respect to the particular vessel, rig, platform, or other vehicle or structure, that application would not be consistent with the national interest; and

"(2) to any vessel, rig, platform, or other vehicle or structure, over 50 percent of which is owned by citizens of a foreign nation or with respect to which the citizens of a foreign nation have the right effectively to control, except to the extent and to the degree that the President determines that the government of such foreign nation or any of its political subdivisions has implemented, by statute, regulation, policy, or practice, a national manning requirement for equipment engaged in the exploration, development, or production of oil and gas in its offshore areas."

### **TITLE III—OFFSHORE OIL SPILL POLLUTION FUND**

#### **DEFINITIONS**

**SEC. 301.** For the purposes of this title, the term—

(1) "Secretary" means the Secretary of Transportation;

(2) "Fund" means the Offshore Oil Pollution Compensation Fund established under section 302 of this title;

(3) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity;

(4) "incident" means any occurrence or series of related occurrences, involving one or more offshore facilities or vessels, or any combination thereof, which causes or poses an imminent threat of oil pollution;

(5) "vessel" means every description of watercraft or other contrivance, whether or not self-propelled, which is operating in the waters above the Outer Continental Shelf (as the term "outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), or which is operating in the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301(a)(2))), and which is transporting oil directly from an offshore facility;

(6) "public vessel" means a vessel which—

(A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government; and

(B) is not engaged in commercial service;

(7) "facility" means a structure, or group of structures (other than a vessel or vessels), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil;

(8) "offshore facility" includes any oil refinery, drilling structure, oil storage or transfer terminal, or pipeline, or any appurtenance related to any of the foregoing, which is used to drill for, produce, store, handle, transfer, process, or transport oil produced from the Outer Continental Shelf (as the term "outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), and is located on the Outer Continental Shelf, except that such term does not include (A) a vessel, or (B) a deepwater port (as the term "deepwater port" is defined in section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502));

(9) "oil pollution" means—

(A) the presence of oil either in an unlawful quantity or which has been discharged at an unlawful rate (i) in or on the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 2(a)(2) of the Submerged Lands Act (43 U.S.C. 1301(a)(2))), or on the adjacent shoreline of such a State, or (ii) on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or

(B) the presence of oil in or on the waters of the high seas outside the territorial limits of the United States—

(i) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); or

(ii) causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States; or

(C) the presence of oil in or on the territorial sea, navigable or internal waters, or adjacent shoreline of a foreign country, in a case where damages are recoverable by a foreign claimant under this title;

(10) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim under this title;

(11) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim under this title;

(12) "United States" includes and "State" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction;

(13) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(14) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from such incident;

(15) "damages" means compensation sought pursuant to this title by any person suffering any direct and actual injury proximately caused by the discharge of oil from an offshore facility or vessel, except that such term does not include cleanup costs;

(16) "person in charge" means the individual immediately responsible for the operation of a vessel or offshore facility;

(17) "claim" means a demand in writing for a sum certain;

(18) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(19) "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, a vessel or offshore facility, whether by lease, permit, contract, license, or other form of agreement, or with respect to any offshore facility abandoned without prior approval of the Secretary of the Interior, the person who owned such offshore facility immediately prior to such abandonment, except that such term does not include a person who, without participating in the management or operation of a vessel or offshore facility, holds indicia of ownership primarily to protect his security interest in the vessel or offshore facility;

(20) "operator" means—

(A) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or

(B) in the case of an offshore facility, any person, except the owner, who is responsible for the operation of such facility by agreement with the owner;

(21) "property" means littoral, riparian, or marine property;

(22) "removal costs" means—

(A) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, and section 5 of the Intervention on the High Seas Act; and

(B) cleanup costs, other than the costs described in subparagraph (A);

(23) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

(24) "gross ton" means a unit of 100 cubic feet for the purpose of measuring the total unit capacity of a vessel; and

(25) "barrel" means 42 United States gallons at 60 degrees Fahrenheit.

#### FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

SEC. 302. (a) There is hereby established in the Treasury of the United States an Offshore Oil Pollution Compensation Fund in an amount not to exceed \$200,000,000, except that such limitation shall be increased to the extent necessary to permit any moneys recovered or collected which are referred to in subsection (b) (2) of this section to be paid into the Fund. The Fund shall be administered by the Secretary

and the Secretary of the Treasury as specified in this title. The Fund may sue and be sued in its own name.

(b) The Fund shall be composed of—

(1) all fees collected pursuant to subsection (d) of this section; and

(2) all other moneys recovered or collected on behalf of the Fund under section 308 or any other provision of this title.

(c) The Fund shall be immediately available for—

(1) removal costs described in section 301(22);

(2) the processing and settlement of claims under section 307 of this title (including the costs of assessing injury to, or destruction of, natural resources); and

(3) subject to such amounts as are provided in appropriation Acts, all administrative and personnel costs of the Federal Government incident to the administration of this title, including, but not limited to, the claims settlement activities and adjudicatory and judicial proceedings, whether or not such costs are recoverable under section 308 of this title.

The Secretary is authorized to promulgate regulations designating the person or persons who may obligate available money in the Fund for such purposes.

(d) (1) The Secretary shall levy and the Secretary of the Treasury shall collect a fee of not to exceed 3 cents per barrel on oil obtained from the Outer Continental Shelf, which shall be imposed on the owner of the oil when such oil is produced.

(2) The Secretary of the Treasury, after consulting with the Secretary, may promulgate reasonable regulations relating to the collection of the fees authorized by paragraph (1) of this subsection and, from time to time, the modification thereof. Any modification shall become effective on the date specified in the regulation making such modification, but no earlier than the ninetieth day following the date such regulation is published in the Federal Register. Any modification of the fee shall be designed to insure that the Fund is maintained at a level of not less than \$100,000,000 and not more than \$200,000,000. No regulation that sets or modifies fees, whether or not in effect, may be stayed by any court pending completion of judicial review of such regulation.

(3) (A) Any person who fails to collect or pay any fee as required by any regulation promulgated under paragraph (2) of this subsection shall be liable for a civil penalty not to exceed \$10,000, to be assessed by the Secretary of the Treasury, in addition to the fee required to be collected or paid and the interest on such fee at the rate such fee would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (e) (2) of this section. Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General may, at the request of the Secretary of the Treasury, bring an action in the name of the Fund against that person for such amount.

(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

(4) *The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected pursuant to paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States shall have access to such records and documents for the purpose of audit and examination.*

(e) (1) *The Secretary shall determine the level of funding required for immediate access in order to meet potential obligations of the Fund.*

(2) *The Secretary of the Treasury may invest any excess in the Fund, above the level determined under paragraph (1) of this subsection, in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the Fund shall be deposited in and credited to the Fund.*

(f) *If at any time the moneys available in the Fund are insufficient to meet the obligations of the Fund, the Secretary shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of such notes or other obligations shall be made by the Secretary from moneys in the Fund. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any notes or other obligations issued under this subsection and, for that purpose, he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of such notes or other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.*

#### DAMAGES AND CLAIMANTS

SEC. 303. (a) *Claims for economic loss, arising out of or directly resulting from oil pollution, may be asserted for—*

1) *removal costs; and*

2) *damages, including—*

(A) *injury to, or destruction of, real or personal property;*

(B) *loss of use of real or personal property;*

(C) *injury to, or destruction of, natural resources;*

(D) *loss of use of natural resources;*

(E) *loss of profits or impairment of earning capacity due to injury to, or destruction of, real or personal property or natural resources; and*

(F) *loss of tax revenue for a period of one year due to injury to real or personal property.*

(b) *A claim authorized by subsection (a) of this section may be asserted—*

(1) *under paragraph (1), by any claimant, except that the owner or operator of a vessel or offshore facility involved in an incident may assert such a claim only if he can show—*

(A) *that he is entitled to a defense to liability under section 304(c) (1) or 304(c) (2) of this title; or*

(B) *if not entitled to such a defense to liability, that he is entitled to a limitation of liability under section 304(b), except that if he is not entitled to such a defense to liability but is entitled to such a limitation of liability, such claim may be asserted only as to the removal costs incurred in excess of that limitation;*

(2) *under paragraphs (2) (A), (B), and (D), by any United States claimant if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;*

(3) *under paragraph (2) (C), by the President, as trustee for natural resources over which the Federal Government has sovereign rights or exercises exclusive management authority; or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State, and sums recovered under paragraph (2) (C) shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources;*

(4) *under paragraph (2) (E), by any United States claimant if the claimant derives at least 25 per centum of his earnings from activities which utilize the property or natural resource;*

(5) *under paragraph (2) (F), by the Federal Government and any State or political subdivision thereof;*

(6) *under paragraphs (2) (A) through (E), by a foreign claimant to the same extent that a United States claimant may assert a claim if—*

(A) *the oil pollution occurred in or on the territorial sea, navigable waters or internal waters, or adjacent shoreline of a foreign country of which the claimant is a resident;*

(B) *the claimant is not otherwise compensated for his loss;*

(C) *the oil was discharged from an offshore facility or from a vessel in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); and*

(D) *recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants;*

(7) *under paragraph (1) or (2), by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection, when he determines that the claim-*

*ants would be more adequately represented as a class in asserting their claims.*

*(c) If the Attorney General fails to take action under paragraph (7) of subsection (b) within sixty days of the date on which the Secretary designates a source under section 306 of this title, any member of a group described in such paragraph may maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to take action shall have no bearing on any class action maintained by any claimant for damages authorized by this section.*

#### LIABILITY

*SEC. 304. (a) Subject to the provisions of subsections (b) and (c) of this section, the owner and operator of a vessel other than a public vessel, or of an offshore facility, which is the source of oil pollution, or poses a threat of oil pollution in circumstances which justify the incurrence of the type of costs described in section 301(22) of this title, shall be jointly, severally, and strictly liable for all loss for which a claim may be asserted under section 303 of this title.*

*(b) Except when the incident is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator, or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government, the total of the liability under subsection (a) of this section incurred by, or on behalf of, the owner or operator shall be—*

*(1) in the case of a vessel, limited to \$250,000 or \$300 per gross ton, whichever is greater, except when the owner or operator of a vessel fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities; or*

*(2) in the case of an offshore facility, the total of removal and cleanup costs, and an amount limited to \$35,000,000 for all damages.*

*(c) There shall be no liability under subsection (a) of this section—*

*(1) if the incident is caused solely by any act of war, hostilities, civil war, or insurrection, or by an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effect of which could not have been prevented or avoided by the exercise of due care or foresight; or*

*(2) if the incident is caused solely by the negligent or intentional act of the damaged party or any third party (including any government entity).*

*(d) Notwithstanding the limitations, exceptions, or defenses of subsection (b) or (c) of this section, all costs of removal incurred by the Federal Government or any State or local official or agency in connection with a discharge of oil from any offshore facility or vessel shall be borne by the owner and operator of the offshore facility or vessel from which the discharge occurred.*

*(e) The Secretary shall, from time to time, report to Congress on the desirability of adjusting the monetary limitation of liability specified in subsection (b) of this section.*

*(f) (1) Subject to the provisions of paragraph (2) of this subsection, the Fund shall be liable, without any limitation, for all losses for*

which a claim may be asserted under section 303 of this title, to the extent that such losses are not otherwise compensated.

(2) Except for the removal costs specified in section 301(22), there shall be no liability under paragraph (1) of this subsection—

(A) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(B) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(g) (1) In addition to the losses for which claims may be asserted under section 303 of this title, and without regard to the limitation of liability provided in subsection (b) of this section, the owner, operator, or guarantor of an offshore facility or vessel shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim is presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which such owner, operator, or guarantor offers the claimant an amount equal to or greater than the amount finally paid in satisfaction of the claim to the date upon which the claimant accepts such amount, inclusive. However, if such owner, operator, or guarantor offers the claimant, within sixty days of the date upon which the claim is presented, or of the date upon which advertising is commenced pursuant to section 306 of this title, whichever is later, an amount equal to or greater than the amount finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer is accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

(2) The interest provided in paragraph (1) of this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

(h) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (a) of this section, or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

(i) To the extent that they are in conflict or otherwise inconsistent with any other provision of law relating to liability or the limitation thereof, the provisions of this section shall supersede such other provision of law, including section 4283(a) of the Revised Statutes (46 U.S.C. 183(a)).

#### FINANCIAL RESPONSIBILITY

SEC. 305. (a) (1) The owner or operator of any vessel (except a non-self-propelled barge that does not carry oil as fuel or cargo) which uses an offshore facility shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such vessel would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 304(b) of this title. Financial responsi-

bility may be established by any one, or any combination, of the following methods, acceptable to the President: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In any case where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary, in accordance with regulations promulgated by him, shall—

(A) deny entry to any port or place in the United States or to the navigable waters to; and

(B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States,

any vessel subject to this subsection which, upon request, does not produce certification furnished by the President that such vessel is in compliance with the financial responsibility provisions of paragraph (1) of this subsection.

(3) The Secretary, in accordance with regulations promulgated by him, shall have access to all offshore facilities and vessels conducting activities under the Outer Continental Shelf Lands Act, and such facilities and vessels shall, upon request, show certification of financial responsibility.

(b) The owner or operator of an offshore facility which (1) is used for drilling for, producing, or processing oil, or (2) has the capacity to transport, store, transfer, or otherwise handle more than one thousand barrels of oil at any one time, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such facility would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 304(b) of this title, or \$35,000,000, whichever is less.

(c) Any claim authorized by section 303(a) may be asserted directly against any guarantor providing evidence of financial responsibility for any owner or operator of an offshore facility or vessel as required under this section. In defending such claim, the guarantor shall be entitled to invoke all rights and defenses which would be available to such owner or operator under this title. Such guarantor shall also be entitled to invoke the defense that the incident was caused by the willful misconduct of such owner or operator, but shall not be entitled to invoke any other defense which such guarantor might be entitled to invoke in proceedings brought by such owner or operator against such guarantor.

(d) The President shall conduct a study to determine—

(1) whether adequate private oil pollution insurance protection is available on reasonable terms and conditions to the owners and operators of vessels, onshore facilities, and offshore facilities; and

(2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions.

*The President shall submit the results of his study, together with his recommendation, within one year after the date of enactment of this title, and shall submit an interim report on his study within three months after such date of enactment.*

#### NOTIFICATION, DESIGNATION, AND ADVERTISEMENT

*Sec. 306. (a) The person in charge of a vessel or offshore facility which is involved in an incident shall immediately notify the Secretary of the incident as soon as he has knowledge thereof. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against such person or his employer in any criminal case, other than a case involving prosecution for perjury or for giving a false statement.*

*(b) (1) When the Secretary receives information pursuant to subsection (a) of this section or otherwise of an incident which involves oil pollution, the Secretary shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of such source and the guarantor of such designation.*

*(2) When a source designated under paragraph (1) of this subsection is a vessel or offshore facility and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not made in accordance with this paragraph, the Secretary shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to such owner, operator, or guarantor.*

*(c) In a case where—*

*(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (b) of this section;*  
*(2) the source of the discharge was a public vessel; or*  
*(3) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of such subsection (b), the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Fund.*

*(d) Advertisement under subsection (b) of this section shall commence no later than fifteen days after the date of the designation made under such subsection and shall continue for a period of no less than thirty days.*

#### CLAIMS SETTLEMENT

*Sec. 307. (a) Except as provided in subsection (b) of this section, all claims shall be presented to the owner, operator, or guarantor.*

*(b) All claims shall be presented to the Fund—*

*(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 306(c) of this title; or*

*(2) where the owner or operator may recover under the provisions of section 303(b) (1) of this title.*

*(c) In the case of a claim presented in accordance with subsection (a) of this section, and in which—*

(1) the person to whom the claim is presented denies all liability for the claim, for any reason; or

(2) the claim is not settled by any person by payment to the claimant within sixty days from the date upon which (A) the claim is presented, or (B) advertising is commenced pursuant to section 306 (b) (2), whichever is later, the claimant may elect to commence an action in court against the owner, operator, or guarantor, or to present the claim to the Fund, that election to be irrevocable and exclusive.

(d) In the case of a claim presented in accordance with subsection (a) of this section, where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 304 (b) of this title or because the owner, operator, and guarantor to whom the claim is presented are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Fund.

(e) In the case of a claim which is presented to any person, pursuant to subsection (a) of this section, and which is being presented to the Fund, pursuant to subsection (c) or (d) of this section, such person, at the request of the claimant, shall transmit the claim and supporting documents to the Fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

(f) In the case of a claim presented to the Fund, pursuant to subsection (b), (c), or (d) of this section, and in which the Fund—

(1) denies all liability for the claim, for any reason; or

(2) does not settle the claim by payment to the claimant within sixty days after the date upon which (A) the claim is presented to the Fund, or (B) advertising is commenced pursuant to section 306 (c) of this title, whichever is later, the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the Fund pursuant to such subsection (b) may elect to commence an action in court against the Fund in lieu of submission of the dispute to the Secretary for decision, that election to be irrevocable and exclusive.

(g) (1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the Fund.

(2) Except as provided in paragraph (3) of this subsection, the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Fund and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) upon a showing by the Secretary that advertising is not reasonably practicable. The Secretary may make advance payments to a contractor for services and facilities, and the Secretary may advance to the contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made pursuant to this subsection. A payment to a claimant for a single claim in excess of \$100,000, or two or more claims aggregating in excess of \$200,000, shall be first approved

by the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted by or on behalf of such State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Secretary may use Federal personnel to process claims against the Fund.

(h) Notwithstanding subsection (b) of section 556 of title 5, United States Code, the Secretary is authorized to appoint, from time to time for a period of not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary pursuant to subsection (f) of this section. At least one member of each panel shall be qualified to conduct adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the Fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, shall apply to panel members appointed from private life.

(i) (1) Upon receipt of a request for a decision from a claimant, properly made, the Secretary shall refer the dispute to (A) an administrative law judge appointed under section 3105 of title 5, United States Code, or (B) a panel appointed under subsection (h) of this section.

(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding subject to this subsection, the presiding officer may require by subpoena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpoenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Secretary. If a person fails or refuses to obey a subpoena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(4) A hearing conducted under this subsection shall be conducted within the United States judicial district within which, or nearest to which, the damage complained of occurred, or, if the damage com-

plained of occurred within two or more districts, in any of the affected districts, or if the damage occurred outside any district, in the nearest district.

(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with regulations which he may promulgate, may review the decision upon his own initiative or upon exception of the claimant or the Fund.

(6) Final orders of the Secretary made under this subsection shall be reviewable pursuant to section 702 of title 5, United States Code, in the district courts of the United States.

(j) (1) In any action brought pursuant to this title against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Fund at the same time such pleadings are served upon the opposing parties.

(2) The Fund may intervene in any action described in paragraph (1) of this subsection as a matter of right.

(3) In any action described in paragraph (1) of this subsection to which the Fund is a party, if the owner, operator, or guarantor admits liability under this title, the Fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

(4) If the Fund receives from either the plaintiff or the defendant notice of an action described in paragraph (1) of this subsection, the Fund shall be bound by any judgment entered therein, whether or not the Fund was a party to the action.

(5) If neither the plaintiff nor the defendant gives notice of an action described in paragraph (1) of this subsection to the Fund, the limitation of liability otherwise permitted by section 304(b) of this title shall not be available to the defendant, and the plaintiff shall not recover from the Fund any sums not paid by the defendant.

(k) In any action brought against the Fund under this title, the plaintiff may join any owner, operator, or guarantor, and the Fund may join any person who is or may be liable to the Fund under any provision of this title.

(l) No claim may be presented, nor may an action be commenced for economic losses recoverable under this title, unless such claim is presented to, or such action is commenced against, the owner, operator, or guarantor, or the Fund, as to their respective liabilities, within three years after the date of discovery of the economic loss for which a claim may be asserted under section 303(a) of this title, or within six years of the date of the incident which resulted in such loss, whichever is earlier.

#### SUBROGATION

SEC. 308. (a) Any person or governmental entity, including the Fund, who pays compensation to any claimant for an economic loss, compensable under section 303 of this title, shall be subrogated to all rights, claims, and causes of action which such claimant has under this title.

(b) Upon request of the Secretary, the Attorney General may commence an action, on behalf of the Fund, for the compensation paid by the Fund to any claimant pursuant to this title. Such an action may

be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, pursuant to any law, to the compensated claimant or to the Fund, for economic losses for which the compensation was paid.

(c) In any claim or action by the Fund against any owner, operator, or guarantor, pursuant to the provisions of subsection (a) or (b), the Fund shall recover—

(1) for a claim presented to the Fund (where there has been a denial of source designation) pursuant to section 307(b)(1) of this title, or (where there has been a denial of liability) pursuant to section 307(c)(1) of this title—

(A) subject only to the limitation of liability to which the defendant is entitled under section 304(b) of this title, the amount the Fund has paid to the claimant, without reduction;

(B) interest on such amount, at the rate calculated in accordance with section 304(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the Fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the Fund offers to the claimant the amount finally paid by the Fund to the claimant in satisfaction of the claim against the Fund to the date upon which the claimant accepts that offer, inclusive; and

(C) all costs incurred by the Fund by reason of the claim, both of the claimant against the Fund and the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

(2) for a claim presented to the Fund pursuant to section 307(c)(2) of this title—

(A) in which the amount the Fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the Fund has paid to the claimant;

(ii) interest, at the rate calculated in accordance with section 304(g)(2) of this title, for the period specified in paragraph (1)(B) of this subsection; and

(iii) all costs incurred by the Fund by reason of the claim of the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

(B) in which the amount the Fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) the amount which the Fund has paid to the claimant, without reduction;

(ii) interest, at the rate calculated in accordance with section 304(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the defendant offered to the claim-

ant the largest amount referred to in this subparagraph, except that if the defendant tenders the offer of the largest amount referred to in this subparagraph within sixty days after the date upon which the claim of the claimant is either presented to the defendant or advertising is commenced pursuant to section 306 of this title, the defendant shall not be liable for interest for that period; and

(iii) interest from the date upon which the claim of the Fund against the defendant is presented to the defendant to the date upon which the Fund is paid, inclusive, less the period, if any, from the date upon which the defendant offers to the Fund the amount finally paid to the Fund in satisfaction of the claim of the Fund to the date upon which the Fund accepts that offer, inclusive.

(d) The Fund shall pay over to the claimant that portion of any interest the Fund recovers, pursuant to subsection (c) (1) and (2) (A), for the period from the date upon which the claim of the claimant is presented to the defendant to the date upon which the claimant is paid by the Fund, inclusive, less the period from the date upon which the Fund offers to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant accepts such offer, inclusive.

(e) The Fund is entitled to recover for all interest and costs specified in subsection (c) of this section without regard to any limitation of liability to which the defendant may otherwise be entitled under this title.

#### JURISDICTION AND VENUE

SEC. 309. (a) The United States district courts shall have original and exclusive jurisdiction of all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

(b) Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

#### RELATIONSHIP TO OTHER LAW

SEC. 310. (a) Any person who receives compensation for damages or removal costs pursuant to this title shall be precluded from recovering compensation for the same damages or removal costs pursuant to any other State or Federal law. Any person who receives compensation for damages or cleanup costs pursuant to any other State or Federal law shall be precluded from receiving compensation for the same damages or removal costs under this title.

(b) No owner or operator of an offshore facility or vessel who establishes and maintains evidence of financial responsibility in accordance with this section shall be required under any State law, rule, or regulation to establish any other evidence of financial responsibility in connection with liability for the discharge of oil from such offshore facility or vessel. Evidence of compliance with the financial responsibility requirement of this section shall be accepted by a State in lieu of any

other requirement of financial responsibility imposed by such State in connection with liability for the discharge of oil from such offshore facility or vessel.

(c) Except as otherwise provided in this title, this title shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil resulting in damages or removal costs within the jurisdiction of such State.

#### PROHIBITION

**Sec. 311.** The discharge of oil from any offshore facility or vessel, in quantities which the President under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)) determines to be harmful, is prohibited.

#### PENALTIES

**Sec. 312.** (a) (1) Any person who fails to comply with the requirements of section 305 of this title, the regulations promulgated thereunder, or any denial or detention order, shall be subject to a civil penalty of not to exceed \$10,000.

(2) The civil penalty described in paragraph (1) of this subsection may be assessed and compromised by the President or his designee, in connection with section 305(a) (1) of this title, and by the Secretary, in connection with section 305(a) (3) and section 305(b) of this title. No penalty shall be assessed until notice and an opportunity for hearing on the alleged violation have been given. In determining the amount of the penalty or the amount agreed upon in compromise, the demonstrated good faith of the party shall be taken into consideration.

(3) At the request of the official assessing a penalty under this subsection, the Attorney General may bring an action in the name of the Fund to collect the penalty assessed.

(b) Any person in charge who is subject to the jurisdiction of the United States and who fails to give the notification required by section 306(a) of this title shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

#### AUTHORIZATION OF APPROPRIATIONS

**Sec. 313.** (a) There is authorized to be appropriated for the administration of this title \$10,000,000 for the fiscal year ending September 30, 1979, \$5,000,000 for the fiscal year ending September 30, 1980, and \$5,000,000 for the fiscal year ending September 30, 1981.

(b) There are also authorized to be appropriated to the Fund, from time to time, such amounts as may be necessary to carry out the purposes of the applicable provisions of this title, including the entering into contracts, any disbursements of funds, and the issuance of notes or other obligations pursuant to section 302(f) of this title.

(c) Notwithstanding any other provision of this title, the authority to make contracts, to make disbursements, to issue notes or other obligations pursuant to section 302(f) of this title, to charge and collect fees pursuant to section 302(d) of this title, or to exercise any other spending authority shall be effective only to the extent provided, without fiscal year limitation, in appropriation Acts enacted after the date of enactment of this title.

## ANNUAL REPORT

*SEC. 314. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress (1) a report on the administration of the Fund during such fiscal year, and (2) his recommendations for such legislative changes as he finds necessary or appropriate to improve the management of the Fund and the administration of the liability provisions of this title.*

## EFFECTIVE DATES

*SEC. 315. (a) This section, subsection (e) of section 304, subsection (d) of section 305, and all provisions of this title authorizing the delegation of authority or the promulgation of regulations shall be effective on the date of enactment of this title.*

*(b) All other provisions of this title, and rules and regulations promulgated pursuant to such provisions, shall be effective on the one hundred and eightieth day after the date of enactment of this title.*

## TITLE IV—FISHERMEN'S CONTINGENCY FUND

## DEFINITIONS

*SEC. 401. As used in this title, the term—*

*(1) "citizen of the United States" means any person who is a United States citizen by law, birth, or naturalization, any State, any agency of a State or a group of States, or any corporation, partnership, or association organized under the laws of any State which has as its president or other chief executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth, or naturalization, and which has at least 75 per centum of the interest of therein owned by citizens of the United States. Seventy-five per centum of the interest in the corporation shall not be deemed to be owned by citizens of the United States—*

*(A) if the title to 75 per centum of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States;*

*(B) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States;*

*(C) if through any contract or understanding it is so arranged that more than 25 per centum of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or*

*(D) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States;*

*(2) "commercial fisherman" means any citizen of the United States who owns, operates, or derives income from being employed on a commercial fishing vessel;*

*(3) "commercial fishing vessel" means any vessel, boat, ship, or other craft which is (A) documented under the laws of the United States or, if under five net tons, registered under the laws of any State, and (B) used for, equipped to be used for, or of a type*

which is normally used for commercial purposes for the catching, taking, or harvesting of fish or the aiding or assisting at sea of any activity related to the catching, taking, or harvesting of fish, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing;

(4) "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species;

(5) "fishing gear" means (A) any commercial fishing vessel, and (B) any equipment of such vessel, whether or not attached to such a vessel;

(6) "Fund" means the Fishermen's Contingency Fund established under section 402 of this title; and

(7) "Secretary" means the Secretary of Commerce or the designee of such Secretary.

#### **ESTABLISHMENT OF THE FISHERMEN'S CONTINGENCY FUND; FEE COLLECTION**

**SEC. 402.** (a) There is hereby established in the Treasury of the United States a Fishermen's Contingency Fund. The Fund shall be available to the Secretary without fiscal year limitation as a revolving fund for the purpose of making payments pursuant to this section. The total amount in the Fund shall at no time exceed \$1,000,000. Amounts paid pursuant to the provisions of subsections (c) and (d) of this section shall be deposited in the Fund. The Fund may sue or be sued in its own name.

(b) The Secretary is authorized to establish and maintain an area account within the Fund for any area of the Outer Continental Shelf for purposes of providing reasonable compensation for damages to, or loss of, fishing gear and any resulting economic loss to commercial fishermen due to activities related to oil and gas exploration, development, and production in such area.

(c) Upon establishment of an area account for any area of the Outer Continental Shelf pursuant to subsection (b) of this section, any holder of a lease issued or maintained under the Outer Continental Shelf Lands Act for any tract in such area and any holder of an exploration permit, or of an easement or right-of-way for the construction of a pipeline in such area, shall pay an amount specified by the Secretary for the purpose of the establishment and maintenance of an area account for such area. The Secretary of the Interior shall collect such amount and deposit it to the credit of such area account within the Fund. In any calendar year, no holder of a lease, permit, easement, or right-of-way shall be required to pay an amount in excess of \$5,000 per lease, permit, easement, or right-of-way.

(d) Subject to subsection (a) of this section, each area account established pursuant to this section shall be maintained at a level not to exceed \$100,000 and, if depleted, shall be replenished by assessments of holders of leases, permits, easements, and rights-of-way in such area.

(e) Amounts in each such area account shall be available for disbursement and shall be disbursed, subject to such amounts as are provided in appropriations Acts, for only the following purposes:

(1) Administrative and personnel expenses of such area account and administrative and personnel expenses of the Fund which re-

late to such area account, except that amounts disbursed for such expenses in any fiscal year shall not exceed 15 per centum of the amounts deposited in such revolving account in such fiscal year.

(2) The payment of any claim in accordance with procedures established under this section for damages suffered as a result of activities in the area for which such area account was established.

(3) Reasonable attorney's fees awarded pursuant to section 405 (e) of this title.

#### DUTIES AND POWERS

SEC. 403. (a) In carrying out the provisions of this title, the Secretary shall—

(1) prescribe, and from time to time amend, regulations for the filing, processing, and fair and expeditious settlement of claims pursuant to this title, including a time limitation on the filing of such claims; and

(2) identify and classify all potential hazards to commercial fishing caused by Outer Continental Shelf oil and gas exploration, development, and production activities, including all obstructions on the bottom, throughout the water column, and on the surface.

(b) The Secretary of the Interior shall establish regulations requiring all materials, equipment, tools, containers, and all other items used on the Outer Continental Shelf to be properly color coded, stamped, or labeled, wherever practicable, with the owner's identification prior to actual use.

(c) (1) Payments shall be disbursed by the Secretary from the appropriate area account to compensate commercial fishermen for actual and consequential damages, including loss of profits, due to damages to, or loss of, fishing gear by materials, equipment, tools, containers, or other items associated with oil and gas exploration, development, or production activities in such area, whether or not such damage occurred in such area.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, no payment may be made by the Secretary from any area account established under this title—

(A) when the damage set forth in a claim was caused by materials, equipment, tools, containers, or other items attributable to a financially responsible party;

(B) to the extent that damages were caused by the negligence or fault of the commercial fisherman making the claim;

(C) if the damage set forth in the claim was sustained prior to the date of enactment of this title;

(D) in the case of a claim for damage to, or loss of, fishing gear, in an amount in excess of the replacement value of the fishing gear with respect to which the claim is filed;

(E) in the case of a claim for loss of profits (i) for any period in excess of 6 months, and (ii) unless such claim is supported by records with respect to the claimant's profits during the previous 12-month period; and

(F) for any portion of the damages claimed with respect to which the claimant has or will receive compensation from insurance.

## BURDEN OF PROOF

*SEC. 404. With respect to any claim for damages filed pursuant to this title, there shall be a presumption that such claim is valid if the claimant establishes that—*

*(1) the commercial fishing vessel was being used for fishing and was located in an area affected by Outer Continental Shelf activities;*

*(2) a report on the location of the material, equipment, tool, container, or other item which caused such damages and the nature of such damages was made within five days after the date on which such damages were discovered;*

*(3) there was no record, on nautical charts or the Notice to Mariners on the date such damages were sustained that such material, equipment, tool, container, or other item existed in such area; and*

*(4) there was no proper surface marker or lighted buoy which was attached or closely anchored to such material, equipment, tool, container, or other item.*

## CLAIM PROCEDURES AND SUBROGATION OF RIGHTS

*SEC. 405. (a) Any commercial fisherman suffering damages compensable under this title may file a claim for compensation with the Secretary, except that no such claim may be filed more than 60 days after the date of discovery of the damages with respect to which such claim is made.*

*(b) Upon receipt of any claim under this section, the Secretary shall—*

*(1) transmit a copy of the claim to the Secretary of the Interior; and*

*(2) refer such matter to a hearing examiner appointed under section 3105 of title 5, United States Code.*

*(c) The Secretary of the Interior shall make reasonable efforts to notify all persons known to have engaged in activities associated with Outer Continental Shelf energy activity in the vicinity. Each such person shall promptly notify the Secretary and the Secretary of the Interior as to whether he admits or denies responsibility for the damages claimed. Any such person, including lessees or permittees or their contractors or subcontractors, may submit evidence at any hearing conducted with respect to such claim.*

*(d) The hearing examiner shall, within 120 days after such matter is referred to him by the Secretary, adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code.*

*(e) If the decision of the hearing examiner is in favor of the commercial fisherman filing the claim, such hearing examiner shall include, as part of the amount certified to the Secretary under subsection (h) (1) of this section, reasonable attorneys' fees incurred by such commercial fisherman in pursuing such claim.*

*(f) (1) For purposes of any hearing conducted pursuant to this section, the hearing examiner shall have the power to administer oaths and subpoena the attendance or testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues being presented for determination.*

(2) In any hearing conducted pursuant to this section with respect to a claim for damages resulting from activities on any area of the Outer Continental Shelf, the hearing examiner shall consider evidence of obstructions in such area which have been identified pursuant to the survey conducted under section 407 of this title.

(g) A hearing conducted under this section shall be conducted within the United States judicial district within which the matter giving rise to the claim occurred, or, if such matter occurred within two or more districts, in any of the affected districts, or, of such matter occurred outside of any district, in the nearest district.

(h) (1) Upon a decision by the hearing examiner and in the absence of a request for judicial review, any amount to be paid, subject to the limitations of this section, shall be certified to the Secretary, who shall promptly disburse the award. Such decision shall not be reviewable by the Secretary.

(2) Upon payment of a claim by the Secretary pursuant to this subsection, the Secretary shall acquire by subrogation all rights of the claimant against any person found to be responsible for the damages with respect to which such claim was made.

(3) Any person who denies responsibility for damages with respect to which a claim is made and who is subsequently found to be responsible for such damages, and any commercial fisherman who files a claim for damages and who is subsequently found to be responsible for such damages, shall pay the costs of the proceedings under this section with respect to such claim.

(i) Any person who suffers legal wrong or who is adversely affected or aggrieved by the decision of a hearing examiner under this section may, no later than 60 days after such decision is made, seek judicial review of such decision in the United States court of appeals for the circuit in which the damage occurred, or if such damage occurred outside of any circuit, in the United States court of appeals for the nearest circuit.

#### ANNUAL REPORT

SEC. 406. (a) The Secretary shall submit an annual report to the Congress which shall set forth—

(1) a description of the types of damages set forth in claims filed with the Secretary during the previous year for compensation from the Fund;

(2) the amount of compensation awarded to claimants during the previous year; and

(3) the number of cases during the previous year in which damages were determined to be the responsibility of a lessee or permittee conducting operations on the Outer Continental Shelf, or the contractor or subcontractor of such a lessee or permittee.

(b) In addition to the material described in subsection (a) of this section, the Secretary shall, after consultation with the Secretary of the Interior, include in the first annual report an evaluation of the feasibility and comparative cost of preventing or reducing obstructions on the Outer Continental Shelf which pose potential hazards to commercial fishing or fishing gear by (1) imposing fines or penalties on lessees or permittees, or contractors or subcontractors of lessees or permittees, who are responsible for such obstructions, or (2) requiring

*the bonding of such lessees or permittees or such contractors or subcontractors.*

#### **SURVEY OF OBSTRUCTIONS ON THE OUTER CONTINENTAL SHELF**

*SEC. 407. (a) The Secretary, in cooperation with the Secretary of the Interior, shall conduct a two-year survey of obstructions on the Outer Continental Shelf. Such survey shall be conducted for purposes of identifying (1) natural obstructions on the Outer Continental Shelf which pose potential hazards to commercial fishing or fishing gear, and (2) in addition, in the case of areas in which oil and gas exploration, development, or production is taking place, manmade obstructions relating to such activities which pose potential hazards to commercial fishing or fishing gear.*

*(b) The Secretary shall, on the basis of the survey conducted under this section, and regulations promulgated under section 403(a) of this title, develop charts for commercial fishermen identifying obstructions on the Outer Continental Shelf.*

*(c) During the first six months of the survey conducted under this section, the Secretary shall concentrate on areas of the Outer Continental Shelf where oil and gas production has commenced or is expected to commence prior to the expiration of the two-year period of such survey.*

### **TITLE V—AMENDMENTS TO THE COASTAL ZONE MANAGEMENT ACT OF 1972**

#### **COASTAL ENERGY IMPACT PROGRAM**

*SEC. 501. (a) Paragraph (2) of section 308(b) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456a(b)(2)) is amended—*

*(1) by striking out "The amounts granted" and inserting in lieu thereof "Subject to paragraph (3), the amounts payable";*

*(2) by striking out "(A), (B), (C), and (D)" and inserting in lieu thereof "(A), (B), and (C)";*

*(3) in subparagraph (A), by striking out "one-third" and inserting in lieu thereof "one-half";*

*(4) in subparagraph (B), by striking out "one-sixth" and inserting in lieu thereof "one-quarter";*

*(5) in subparagraph (C), by striking out "one-sixth" and inserting in lieu thereof "one-quarter"; and*

*(6) by striking out subparagraph (D).*

*(b) Such section 308(b) is amended—*

*(1) by renumbering paragraphs (3) through (5), and any references thereto, as paragraphs (4) through (6), respectively; and*

*(2) by inserting after paragraph (2) the following new paragraph:*

*"(3)(A)(i) After making the calculations required under paragraph (2) for any fiscal year, the Secretary shall—*

*"(I) with respect to any coastal state which, based on such calculations, would receive an amount which is less than 2 per centum of the amount appropriated for such fiscal year, increase the amount payable to such coastal state to 2 per centum of such appropriated amount; and*

"(II) with respect to any coastal state which, in such fiscal year, would not receive a grant under paragraph (2), make a grant to such coastal state in an amount equal to 2 per centum of the total amount appropriated for making grants to all states under paragraph (2) in such fiscal year if any other coastal state in the same region will receive a grant under such paragraph in such fiscal year, except that a coastal state shall not receive a grant under this subclause unless the Secretary determines that it is being or will be impacted by outer Continental Shelf energy activity and that it will be able to expend or commit the proceeds of such grant in accordance with the purposes set forth in paragraph (5).

"(ii) For purposes of this subparagraph—

"(I) the states of Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia, the Commonwealth of Puerto Rico, and the Virgin Islands (the Atlantic coastal states) shall constitute one 'region';

"(II) the states of Alabama, Florida, Louisiana, Mississippi, and Texas (the Gulf coastal states) shall constitute one 'region';

"(III) the states of California, Hawaii, Oregon, and Washington (the Pacific coastal states) shall constitute one 'region'; and

"(IV) the state of Alaska shall constitute one 'region'.

"(B) If, after the calculations required under subparagraph (A), the total amount of funds appropriated for making grants to coastal states in any fiscal year pursuant to this subsection is less than the total amount of grants payable to all coastal states in such fiscal year, there shall be deducted from the amount payable to each coastal state which will receive more than 2 per centum of the amount of funds so appropriated an amount equal to the product of—

"(i) the amount by which the total amount of grants payable to all coastal states in such fiscal year exceeds the total amount of funds appropriated for making such grants; multiplied by

"(ii) a fraction, the numerator of which is the amount of grants payable to such coastal state in such fiscal year reduced by an amount equal to 2 per centum of the total amount appropriated for such fiscal year and the denominator of which is the total amount of grants payable to coastal states which, in such fiscal year, will receive more than 2 per centum of the amount of funds so appropriated, reduced by an amount equal to the product of 2 per centum of the total amount appropriated for such fiscal year multiplied by the number of such coastal states.

"(C)(i) If, after the calculations required under subparagraph (B) for any fiscal year, any coastal state would receive an amount which is greater than 37½ per centum of the amount appropriated for such fiscal year, the Secretary shall reduce the amount payable to such coastal state to 37½ per centum of such appropriated amount.

"(ii) Any amount not payable to a coastal state in a fiscal year due to a reduction under clause (i) shall be payable proportionately to all coastal states which are to receive more than 2 per centum and less than 37½ per centum of the amount appropriated for such fiscal year, except that in no event shall any coastal state receive more than 37½ per centum of such appropriated amount.

"(iii) For purposes of this subparagraph, the term 'payable proportionately' means payment in any fiscal year in accordance with the provisions of paragraph (2), except that in making calculations under such paragraph the Secretary shall only include those coastal states which are to receive more than 2 per centum and less than 37½ per centum of the amount appropriated for such fiscal year."

(c)(1) Paragraph (5)(B)(i) of such section 308(b) (as renumbered by subsection (b) of this section) is amended to read as follows:

"(i) necessary to provide new or improved public facilities and public services which are required as a result of outer Continental Shelf energy activity;"

(2) Paragraph (5)(B) of such section 308(b) (as so renumbered) is amended by adding at the end thereof the following new sentence:

"The Secretary may, pursuant to criteria promulgated by rule, describe geographic areas in which public facilities and public services referred to in clause (i) shall be presumed to be required as a result of outer Continental Shelf energy activity for purposes of disbursing the proceeds of grants under this subsection."

#### AUTHORIZATION OF APPROPRIATIONS

SEC. 502. Paragraph (3) of section 318(a) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1464(a)(3)) is amended to read as follows:

"(3) such sums, not to exceed \$50,000,000 for each of the fiscal years ending September 30, 1977, and September 30, 1978, and not to exceed \$130,000,000 per fiscal year for each of the fiscal years occurring during the period beginning on October 1, 1978, and ending September 30, 1988, as may be necessary for grants under section 308(b)."

#### OUTER CONTINENTAL SHELF GRANTS

SEC. 503. (a) Section 308(c) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456a(c)) is amended—

(1) by inserting "(1)" immediately after "(c)"; and

(2) by adding at the end thereof the following new paragraph:

"(2) The Secretary shall make grants under this paragraph to any coastal state which the Secretary finds is likely to be affected by outer Continental Shelf energy activities. Such grants shall be used by such state to carry out its responsibilities under the Outer Continental Shelf Lands Act. The amount of any such grant shall not exceed 80 per centum of the cost of carrying out such responsibilities."

(b) Section 308(a)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456a(a)(1)) is amended—

(1) in subparagraph (B) thereof, by striking out "subsection (c)" and inserting in lieu thereof "subsection (c)(1)"; and

(2) by redesignating subparagraphs (C) through (F), and any references thereto, as subparagraphs (D) through (G), respectively, and inserting immediately after subparagraph (B) the following new subparagraph:

"(C) grants, under subsection (c)(2), to coastal states to carry out their responsibilities under the Outer Continental Shelf Lands Act;"

(c) Section 308(h) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456a(h)) is amended by striking out "subsections (c)" each place it appears and inserting in lieu thereof "subsections (c)(1)".

(d) Section 308(k)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456a(k)(1)) is amended by striking out "and (c)" and inserting in lieu thereof "and (c)(1)".

(e) Section 318(a) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1464(a)) is amended—

(1) by redesignating paragraphs (4) through (8), and all references thereto, as paragraphs (5) through (9), respectively; and

(2) by inserting immediately after paragraph (3) the following new paragraph:

"(4) such sums, not to exceed \$5,000,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, September 30, 1982, and September 30, 1983, as may be necessary for grants under section 308(c)(2), to remain available until expended;"

(f) Section 318(b) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1464(b)) is amended—

(1) by striking out "subsection (b)" and inserting in lieu thereof "subsections (b) and (c)(2)"; and

(2) by striking out "subsections (c)" and inserting in lieu thereof "subsections (c)(1)".

#### STATE MANAGEMENT PROGRAM

Sec. 504. Section 307(c)(3)(B)(ii) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(3)(B)(ii)) is amended to read as follows:

"(ii) concurrence by such state with such certification is conclusively presumed as provided for in subparagraph (A), except if such state fails to concur with or object to such certification within three months after receipt of its copy of such certification and supporting information, such state shall provide the Secretary, the appropriate federal agency, and such person with a written statement describing the status of review and the basis for further delay in issuing a final decision, and if such statement is not so provided, concurrence by such state with such certification shall be conclusively presumed; or"

### TITLE VI—MISCELLANEOUS PROVISIONS

#### REVIEW OF SHUT-IN OR FLARING WELLS

Sec. 601. (a) In a report submitted within six months after the date of enactment of this Act, and his annual report thereafter, the Secretary of the Interior shall list all shut-in oil and gas wells and wells flaring natural gas on leases issued under the Outer Continental Shelf Lands Act. Each such report shall be submitted to the Comptroller General and shall indicate why each well is shut-in or flaring natural gas, and whether the Secretary intends to require production on such a shut-in well or order cessation flaring.

(b) Within six months after receipt of the Secretary's report, the Comptroller General shall review and evaluate the methodology used by the Secretary in allowing the wells to be shut-in or to flare natural gas and submit his findings and recommendations to the Congress.

## REVIEW AND REVISION OF ROYALTY PAYMENTS

*SEC. 602. As soon as feasible and no later than ninety days after the date of enactment of this Act, and annually thereafter, the Secretary of the Interior shall submit a report or reports to the Congress describing the extent, during the two-year period preceding such report, of delinquent royalty accounts under leases issued under any Act which regulates the development of oil and gas on Federal lands, and what new auditing, post-auditing, and accounting procedures have been adopted to assure accurate and timely payment of royalties and net profit shares. Such report or reports shall include any recommendations for corrective action which the Secretary of the Interior determines to be appropriate.*

## NATURAL GAS DISTRIBUTION

*SEC. 603. (a) The purpose of this section is to encourage expanded participation by local distribution companies in acquisition of leases and development of natural gas resources on the Outer Continental Shelf by facilitating the transportation in interstate commerce of natural gas, which is produced from a lease located on the Outer Continental Shelf and owned, in whole or in part, by a local distribution company, from such lease to the service area of such local distribution company.*

*(b) The Federal Energy Regulatory Commission shall, after opportunity for presentation of written and oral views, promulgate and publish in the Federal Register a statement of Commission policy which carries out the purpose of this section and sets forth the standards under which the Commission will consider applications for, and, as appropriate, issue certificates of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, for the transportation in interstate commerce of natural gas, which is produced from a lease located on the Outer Continental Shelf and owned, in whole or in part, by a local distribution company, from such lease to the service area of such local distribution company. Such statement of policy shall specify the criteria, limitations, or requirements the Commission will apply in determining—*

*(1) whether the application of any local distribution company qualifies for consideration under the statement of policy; and*

*(2) whether the public convenience and necessity will be served by the issuance of the requested certificate of transportation.*

*Such statement of policy shall also set forth the terms or limitations on which the Commission may condition, pursuant to section 7 of the Natural Gas Act, the issuance of a certificate of transportation under such statement of policy. To the maximum extent practicable, such statement shall be promulgated and published within one year after the date of enactment of this section.*

*(c) For purposes of this section, the term—*

*(1) "local distribution company" means any person—*

*(A) engaged in the distribution of natural gas at retail, including any subsidiary or affiliate thereof engaged in the exploration and production of natural gas; and*

- (B) regulated, or operated as a public utility, by a State or local government or agency thereof;
- (2) "interstate commerce" shall have the same meaning as such term has under section 2(7) of the Natural Gas Act; and
- (3) "Commission" means the Federal Energy Regulatory Commission.

#### ANTIDISCRIMINATION PROVISIONS

**SEC. 604.** Each agency or department given responsibility for the promulgation or enforcement of regulations under this Act or the Outer Continental Shelf Lands Act shall take such affirmative action as deemed necessary to prohibit all unlawful employment practices and to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving or participating in any activity, sale, or employment, conducted pursuant to the provisions of this Act or the Outer Continental Shelf Lands Act. The agency or department shall promulgate such rules as it deems necessary to carry out the purposes of this section, and any rules promulgated under this section, whether through agency and department provisions of this Act or the Outer Continental Shelf Lands Act, shall be similar to those established and in effect under title VI and title VII of the Civil Rights Act of 1964.

#### SUNSHINE IN GOVERNMENT

**SEC. 605.** (a) Each officer or employee of the Department of the Interior who—

(1) performs any function or duty under this Act or the Outer Continental Shelf Lands Act, as amended by this Act; and

(2) has any known financial interest in any person who (A) applies for or receives any permit or lease under, or (B) is otherwise subject to the provisions of this Act or the Outer Continental Shelf Lands Act.

shall, beginning on February 1, 1979, annually file with the Secretary of the Interior a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) The Secretary of the Interior shall—

(1) within ninety days after the date of enactment of this Act—

(A) define the term "known financial interest" for purposes of subsection (a) of this section; and

(B) establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) In the rules prescribed in subsection (b) of this section, the Secretary may identify specific positions within the Department of the Interior which are of a nonregulatory or nonpolicymaking nature and

provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Any officer or employee who is subject to, and knowingly violates, this section shall be fined not more than \$2,500 or imprisoned not more than one year, or both.

**INVESTIGATION OF AVAILABILITY OF OIL AND NATURAL GAS FROM THE OUTER CONTINENTAL SHELF**

**SEC. 606. (a) The Congress hereby finds that—**

(1) there is a serious lack of adequate basic energy information available to the Congress and the Secretary of the Interior with respect to the availability of oil and natural gas from the Outer Continental Shelf;

(2) there is currently an urgent need for such information;

(3) the existing collection of information by Federal departments and agencies relevant to the determination of the availability of such oil and natural gas is uncoordinated, is jurisdictionally limited in scope, and relies too heavily on unverified information from industry sources;

(4) adequate, reliable, and comprehensive information with respect to the availability of such oil and natural gas is essential to the national security of the United States; and

(5) this lack of adequate reserve data requires a reexamination of past data as well as the acquisition of adequate current data.

(b) The purpose of this section is to enable the Secretary of the Interior and the Congress to gain the best possible knowledge of the status of Outer Continental Shelf oil and natural gas reserves, resources, productive capacity, and production available to meet current and future energy supply emergencies, to gain accurate knowledge of the potential quantity of oil and natural gas resources which could be made available to meet such emergencies, and to aid in establishing energy pricing and conservation policies.

(c) The Secretary of the Interior shall conduct a continuing investigation, based on data and information which he determines has been adequately and independently audited and verified, for the purpose of determining the availability of all oil and natural gas produced or located on the Outer Continental Shelf.

(d) The investigation conducted pursuant to this section shall include, among other items—

(1) (A) a determination of the maximum attainable rate of production (MAR) of crude oil and natural gas from significant fields on the Outer Continental Shelf; and

(B) an analysis of whether the actual production has been less than the MAR and, if so, the reasons for the differences;

(2) an estimate of the total discovered crude oil and natural gas reserves by fields (including proved and indicated reserves) and undiscovered crude oil and natural gas resources (including hypothetical and speculative resources) of the Outer Continental Shelf;

(3) the relationship of any and all such information to the requirements of conservation, industry, commerce, and the national defense; and

(4) an independent evaluation of trade association procedures for estimating Outer Continental Shelf reserves, ultimate recovery, and productive capacity for years in which trade associations made such estimates. In order to provide maximum opportunity for evaluation and continuity, the Secretary shall obtain all the available data and other records, including a description of the methodology and estimating procedures, which the trade associations used in compiling their data with respect to the reserves.

(e) The Secretary shall, not later than one year after the date of enactment of this section, submit an initial report to the Congress. The initial report shall include cost estimates for the separate components of the continuing investigation and a time schedule for meeting all of its specifications. The schedule shall provide for producing all the information required in subsections (d) (1) (A), (d) (2), and (d) (3) of this section on the day following the first complete calendar year after such date of enactment, and every two years thereafter. The Secretary shall make separate reports on the data acquired pursuant to subsection (d) (4) of this section as follows:

(1) Within six months after the date of enactment of this section, a report on the acquisition and details of trade association data and information.

(2) Within twelve months after submission of the report required by subsection (e) (1) of this section, an evaluation of the trade association materials.

(3) Within twelve months after submission of the report required by paragraph (2) of this subsection, a report on the relationship between trade association data and the new data collected under this section.

(f) The Secretary of the Interior shall consult with the Federal Trade Commission regarding categories of information acquired pursuant to this section. Notwithstanding any other provision of law, the Secretary of the Interior shall, upon request of the Federal Trade Commission, make available to such Commission any information acquired under this section.

(g) For purposes of this section, the term—

(1) “maximum attainable rate of production” or “MAR” means the maximum rate of production of crude oil and natural gas which may be produced under actual operating conditions without loss of ultimate recovery of crude oil and natural gas; and

(2) “Outer Continental Shelf” has the meaning given such term in section 2(a) of the Outer Continental Shelf Lands Act.

#### RECOMMENDATIONS FOR TRAINING PROGRAM

SEC. 607. Not later than ninety days after the date of enactment of this Act, the Secretary of the Interior, in consultation with the Secretary of the Department in which the Coast Guard is operating, shall prepare and submit to the Congress a report which sets forth the recommendations of the Secretary for a program to assure that any individual—

(1) who is employed on any artificial island, installation, or other device located on the Outer Continental Shelf; and

(2) who, as part of such employment, operates, or supervises the operation of pollution-prevention equipment, is properly trained to operate, or supervise the operation of, such equipment, as the case may be.

#### RELATIONSHIP TO EXISTING LAW

*SEC. 608. (a) Except as otherwise expressly provided in this Act, nothing in this Act shall be construed to amend, modify, or repeal any provision of the Coastal Zone Management Act of 1972, the National Environmental Policy Act of 1969, the Mining and Mineral Policy Act of 1970, or any other Act.*

*(b) Nothing in this Act or any amendment made by this Act to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) or any other Act shall be construed to affect or modify the provisions of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.) which provide for the transferring and vesting of functions to and in the Secretary of Energy or any component of the Department of Energy.*

And the House agree to the same.

HENRY M. JACKSON,  
FRANK CHURCH,  
J. BENNETT JOHNSTON,  
JAMES ABOUREZK,  
DALE BUMPERS,  
CLIFFORD P. HANSEN,  
JAMES A. MCCLURE,

*Managers on the Part of the Senate.*

JOHN M. MURPHY,  
MO K. UDALL,  
JOSHUA EILBERG,  
GERRY STUDDS,  
BILL HUGHES,  
GEO. MILLER,  
CHRISTOPHER J. DODD,  
JOHN F. SEIBERLING,  
HAMILTON FISH, JR.  
EDWIN B. FORSYTHE,  
DON YOUNG,  
JOHN D. DINGELL,

*Managers on the Part of the House.*

## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 9) to establish a policy for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment.

The provisions of the Senate bill and the House amendment considered by the committee on conference were based on identical bills introduced in the opening days of the 95th Congress. These bills were thereafter amended by the House Ad Hoc Select Committee on the Outer Continental Shelf and the Senate Committee on Energy and Natural Resources and then by the full House and Senate. To fully inform the House and the Senate as to the effect of the amendment contained in the accompanying conference report, the managers will set forth, with the exception of certain technical and conforming changes, an explanation of all differences and the resolution of the differences, section by section.

### SECTION-BY-SECTION DISCUSSION

#### TITLE I—FINDINGS AND PURPOSES

##### *Section 101—Findings*

This section follows provisions in both the Senate bill and the House amendment in setting out a number of findings about the current and future energy supply situation, and the potential role of the oil and gas resources of the Outer Continental Shelf (OCS), the intent of which are clear.

The House amendment contains a finding that OCS lands and resources are public property held in trust. The Senate bill contains no such provision. The House receded to the Senate and the conference report contains no such provision.

Findings in the House amendment pointed out that OCS impacts and policies and programs specifically apply to and impact on States and on local governments. The Senate bill does not include any specific

language as to local governments. The conference report incorporates a modified version of the House amendment. First, finding (10) recognizes that there is a possibility of adverse impacts on States and on local government units within States. Finding (11) provides that affected local governments are to have access to planning information and to make comments on decisions, but through States. States are to work in close cooperation with affected local governments to insure such access and input.

The change is the first of several that the managers made as to the involvement of local governments in OCS activities and decisionmaking. Other changes will be explained as they arise in this discussion. In general, it is intended that local governments are generally to act through their State government representatives; that data and recommendations are to be forwarded to and by local governments through State governments. Which local governments are to be considered affected will be determined by the Governors of affected States. In addition, the managers intend that there is to be no independent basis for legal action by a local government unit against activities under this act, or actions pursuant to this act, because of a dispute with a State government as to whether they are "affected" and regarding any alleged failure to consult with, submit data to, or receive the recommendations of a local government.

The conference report includes as a finding (14), language in the Senate bill not contained in the House amendment, which details the need to develop resources in light of long-range energy needs and adequate protection of renewable resources. In addition, the conference report includes as a finding (15) language in the Senate bill, not contained in the House amendment which states that funds should be made available for damages to commercial fishing vessels and gear.

#### *Section 102—Purposes*

This section follows provisions in both the Senate bill and House amendment stating the purposes of the act, the intent of which is clear.

Purpose No. (1) follows the Senate bill and provides that the policies and procedures for managing OCS resources are those "which are intended to result in expedited exploration and development of the area". The House amendment contains no such language. The conference report thereby emphasizes the need for the expeditious yet safe exploration and development of the Outer Continental Shelf.

The House amendment specifically refers to local governments in purposes (4), (5), and (6). The Senate bill does not include such references in these provisions. The conference report adopted a modified version of the House amendment, which makes it clear, as noted in the discussion on Section 101, that the purposes of the act are to assist and involve local governments, but only "through States".

The Senate bill includes a purpose (10) to establish a fishermen's fund to compensate for damages to commercial fishing vessels and gear, resulting from Outer Continental Shelf activities. The House amendment contains no such explicit purpose, but does later provide for the establishment of such a fund. The conference report includes the referenced purpose of the Senate bill calling for the establishment of a fishermen's contingency fund.

## TITLE II—AMENDMENTS TO THE OUTER CONTINENTAL SHELF LANDS ACT

This title contains a series of amendments to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331 -9) (OCS Act).

*Section 201—Definitions*

Both the Senate bill and House amendment, in similar language, provide definitions for use throughout the bill. The conference report resolves the minor differences between the two versions and amends section 2 of the OCS Act.

*New definition of "Secretary"—Section 2(b)*

The House amendment changes the definition of "Secretary" to insure applicability not only to the Secretary of the Interior but to the Secretary of Energy or the Federal Energy Regulatory Commission, where appropriate, as certain functions under the OCS Act were transferred to them pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 et seq.) (DOE Act). The Senate bill contains no such language. The conference report adopts the House definition of the term "Secretary". In addition, the conference report adopts specific language in section 608(b) to make it explicit that the passage of this act is not to modify provisions of the DOE Act transferring authority or functions.

The managers recognize the need for a new definition for the term "Secretary" in order to maintain the responsibilities of the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) in light of the enactment of the Department of Energy Organization Act (Public Law 95-91).

Specifically, under section 302(b), transferred to the Secretary of Energy are the "functions of the Secretary of the Interior to promulgate regulations under the Outer Continental Shelf Lands Act, ... which relate to the —

- (1) fostering of competition for Federal leases (including, but not limited to, prohibition on bidding for development rights by certain types of joint ventures);
- (2) implementation of alternative bidding systems authorized for the award of Federal leases;
- (3) establishment of diligence requirements for operations conducted on Federal leases (including, but not limited to, procedures relating to the granting or ordering by the Secretary of the Interior of suspension of operations or production as they relate to such requirements);
- (4) setting rates of production for Federal leases; and
- (5) specifying the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind.

In addition, the DOE Act also provides that functions of the Secretary of the Interior to establish production rates for all Federal leases are to be transferred to the Secretary of Energy.

The DOE Act also established a leasing liaison committee composed of employees of the Department of Energy and the Department of the Interior to provide an institutional coordinating mechanism to supplement and to assist in alternative interdepartmental coordination efforts

regarding energy mineral leasing. In addition, the DOE Act directs the Secretary of Energy to consult with the Secretary of the Interior during preparation of regulations relating to certain provisions in Federal leases. Furthermore, the DOE Act directs the Secretary of the Interior to afford the Secretary of Energy not less than 30 days prior to granting a Federal lease to disapprove any term or condition of such lease which relates to a matter within the Secretary of Energy's area of responsibility.

Finally, the DOE Act provides that the Department of the Interior shall be the lead agency for purposes of preparation of an environmental impact statement as required by Section 102(2)(C) of the National Environmental Policy Act for any action with respect to Federal energy mineral leases, unless the action involves matters within the exclusive authority of the Secretary of Energy.

In addition to this new definition of "Secretary" and conforming language in section 608(b), the Managers have also made certain changes throughout the bill, and will provide comments in this explanation to more specifically indicate the appropriate delegation, under the DOE Act, of responsibilities between the Secretary of the Interior, the Federal Energy Regulatory Commission, and the Secretary of Energy.

#### *New definition of "lease"—Section 2(c)*

The House amendment defines "lease" to authorize exploration, development, and production of "geothermal steam". The Senate bill authorizes leases for "geothermal resources." There are also punctuation and structural differences between the two provisions defining "lease". The conference report follows the House amendment by changing the term, "mineral lease," in the OCS Act of 1953, to "lease" so as to more properly describe the authorization for the exploration, development and production of oil and gas or other mineral resources; and by adding a new definition of "minerals" to make it explicit that the Secretary of the Interior has the power to lease geothermal resources on the OCS.

#### *Additional definitions*

The conference report retains new definitions included in both the Senate bill and the House amendment for the terms "coastal zone", "affected State", "marine environment", "coastal environment", "human environment", "Governor", "exploration", "development", "production", "antitrust law", "fair market value", "major Federal action", and "minerals."

In the definition of "affected State", the Managers intend that the "Secretary", determining applicability of this provision in certain circumstances, is to be the Secretary of the Interior. In the definition of "affected State", the House amendment adds "directly to such State" to relate to oil transported. The Senate bill contains no such phrase. The conference report follows the House amendment, so that oil indirectly transported would not, in and of itself, qualify a State for "affected State" status.

In the definition of "human environment", the House amendment refers to "esthetic" components and applies to the "recreation, air and water" of those areas affected. The Senate bill does not include such references. The conference report is the same as the Senate bill.

In the definition of "exploration" the House amendment describes drilling "on or off geological structures", while the Senate bill describes such drilling as "on or off known geological structures". The conference report follows the Senate bill, adopting the phrase "on or off known geological structures".

The definition of "exploration" and "development" of the House amendment discusses discovery "in paying quantities", while the Senate bill refers to discovery "in commercial quantities". On this technical difference, the conference report follows the House amendment, employing the phrase, "in paying quantities"—presently used in OCS practice. Also the House amendment defines "development" to include "pipeline routing". The Senate bill contains no such reference. The conference report adopts the language of the House amendment.

In the definition of "major Federal action" as to actions by the Secretary calling into operation the provisions of the National Environmental Policy Act (NEPA), "Secretary" means the Secretary of the Interior.

Regarding the definition of the term "fair market value", the Managers intend that the determination by the Secretary of the Interior of fair market value is to be undertaken in consultation with the Secretary of Energy. This term, as defined in subsection (o), is only used in this act in relation to the purchase and distribution of oil and gas under section 27.

The House amendment defines "frontier area" for the purpose of applying certain procedures required by the OCS Amendments. The Senate bill contains no such definition. The conference report follows the Senate bill and contains no such definition. The inapplicability of provisions of this Act to specific areas are specifically detailed in the conference report and will be noted in this discussion as appropriate.

The House amendment defines "minerals" to include all kinds of resources. The Senate bill contains no such provision. This change in the House amendment has resulted in a number of technical changes throughout the House amendment, deleting references to oil, natural gas, and geothermal resources, which are contained in the Senate bill. The conference report is the same as the House amendment, defining "minerals".

The managers recognize that "geopressured—geothermal and associated resources" included in the new definition of "minerals", apply to such combined resources as methane, heat and kinetic energy and that these resources may sometimes be developed with other hydrocarbons. Much progress is expected to be made in developing the technology to produce and utilize the resources. The managers therefore intend that the Secretary have the flexibility to issue leases for—geopressured—geothermal and associated resources either alone or in combination with oil and gas leases.

#### *Section 202—National policy for the Outer Continental Shelf*

Section 202 amends section 3 of the OCS Act, originally a jurisdictional provision, and makes it into a declaration of national policy. The original provisions of section 3, providing that the subsoil and seabed of the OCS belong to the United States and that all existing rights of navigation and fishing in OCS waters are to be continued, are restated.

Policy statements are added to emphasize that the OCS is held for all the people, and its resources should be made available for expeditious and orderly development subject to environmental safeguards, and with due consideration to affected States.

The House amendment as to adverse effects policy (4) (A), contains reference to impacts on "affected local governments". The House amendment as to policy (4) (B), on participation, contains references to "affected local governments". The House amendment as to purpose (5), dealing with recognition of local rights and responsibilities, includes specifically "local governments". The Senate bill contains no such references. In all of the above-mentioned policy statements, the conference report adopted a modified version of the House amendment.

Policies for assistance, participation, and consideration are to involve local governments "through States", and "where appropriate." As the discussion in the explanation on references to local governments in the findings (sec. 101) noted, such references to local governments' involvement in this Act provide no independent basis for legal action by a local government unit against activities under this act, or actions pursuant to this act, because of a dispute with a State government as to whether they are "affected", or regarding any alleged failure to consult with, submit data to, or receive the recommendations of a local government.

#### *Section 203—Laws applicable to the Outer Continental Shelf*

Both the Senate bill and the House amendment amend section 4(a) (1) of the OCS Act of 1953 by changing the term "fixed structures" to "and all installations and other devices permanently or temporarily attached to the seabed" and making other technical changes. The conference report retains this language.

The intent of the managers in amending section 4(a) of the 1953 OCS Act is technical and perfecting and is meant to restate and clarify and not change existing law. Under the conference report language, Federal law is to be applicable to all activities on all devices in contact with the seabed for exploration, development, and production.

One particular aspect of federal law, and its applicability to OCS operations, was specifically addressed by the conferees—application of U.S. customs laws.

The conferees were informed that the U.S. Customs Service has interpreted existing section 4(a) (1) to mean that foreign-built production platforms are not subject to import duties when they are brought into OCS waters and attached to the seabed. Specifically, the Customs Service has stated that such platforms are not actually being imported to the United States until they are placed on the shelf and need not pay customs duties.<sup>1</sup> The conferees reject this interpretation and believe it is contrary to the intent of Congress in enacting the 1953 act. Moreover, to make it explicit that this interpretation should not be continued to be given effect, the conferees state that one of the purposes of this change in 4(a) (1) is to make it clear that U.S. custom duties are to apply to platform, built overseas, and brought into OCS waters

<sup>1</sup> The Customs Service indicates that once the platforms are in place, machinery, equipment, and other items placed on the structure are subject to duties. Of course, the conferees believe this is, and continues to be, the law.

for placement so that it can be used to develop and produce OCS minerals.

Under section 4(a)(1) of the conference report, Federal laws and "civil and political jurisdiction of the United States" are applicable to the subsoil and seabed of the OCS, to all artificial islands and "all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon" to explore, develop, produce or transport OCS mineral resources. This customs laws apply—as within the "political and civil jurisdiction" of the United States—to platforms constructed outside the United States and brought into OCS waters—as being "installations and other devices \* \* \* which may be erected thereon".

Section 4(a)(2) of the OCS Act provides that when Federal law or regulations are not applicable, the laws of adjacent States are to apply "to that portion of the subsoil and seabed of the Outer Continental Shelf, and artificial islands and fixed structures erected thereon." Considerable case law has developed as to the effect of this provision. The House amendment includes a paragraph (3), changing 4(a)(2) to utilize the conforming "islands and installations" language. The intent is only technical. Some concern was raised, however, that a change might be interpreted as being substantive. The conference report therefore follows the Senate bill and makes no change in section 4(a)(2).

The Senate bill adds a new section 4(a)(2)(B)—and conforming changes—to provide for the establishment of international boundaries dispute settlement procedures. The House amendment contains no such language. The conference report includes the boundary dispute settlement provision of the Senate bill.

The conference report also adopted a conforming change to section 4(c) of the 1953 OSC Act. Section 4(c) describes the application of the Longshoremen's and Harbor Workers' Compensation Act and makes reference to section 4(b) of the original 1953 act. Section 4(b), providing the jurisdictional bases for cases and controversies, has been deleted and an analogous provision adopted as part of a comprehensive section 23 on "Citizen Suits, Court Jurisdiction, and Judicial Review."

It was therefore necessary to more specifically describe the applicability of the Longshoremen's Act to OSC activities. This amendment involves no change in existing law. It was not the intent of the managers to alter in any way the existing coverage of the Longshoremen's Act, nor of other remedies that may be available for injury or death.

Section 4(f) of the Outer Continental Shelf Lands Act of 1953 provides that the authority of the Corps of Engineers to prevent obstructions to navigation is extended to artificial islands and fixed structures located on the Outer Continental Shelf. This authority has been used by the Corps of Engineers to regulate the construction and location of such things as artificial fishing reefs, radio towers, and a proposed gambling casino which was to be constructed on reefs. It also applies to structures erected for the purpose of exploring for and transporting resources, such as oil drilling rigs.

As indicated above, section 203 of the conference report amends section 4 by changing the phrase "artificial islands and fixed structures" in subsection (a) to "artificial islands and all installations and other devices permanently or temporarily attached to the seabed".

In addition, a conforming change to old section 4(b), the new section 4(f), relating to the authority of the Corps of Engineers, describes it as applying to artificial islands, installations and other devices referred to in subsection (a).

Again, these changes were technical only and there was no intent to change present law. The existing authority of the Corps of Engineers, in subsection 4(f), applies to all artificial islands and fixed structures on the Outer Continental Shelf, whether or not they are erected for the purpose of exploring for, developing, removing, and transporting resources therefrom. The amendment to subsection 4(f) is not intended to change the scope of this authority, but merely to conform the description of the types of structures, no matter what their purpose, to the types of structures listed in subsection (a), namely all installations and other devices permanently or temporarily attached to the seabed. It is not the intention of the conferees to limit the authority of the Corps of Engineers as to structures used for the exploration, development, removal, and transportation of resources.

The House amendment adds a new paragraph 4(e) (3), for agreements by owners or operators of foreign vessels working on the Outer Continental Shelf, providing that such vessels are to conform to the laws of the United States and applicable regulations. The Senate bill contains no such provision. The House receded and the conference report contains no such provision. (The conference report does provide in a separate section 30, discussed later, certain requirements for foreign vessels.)

*Section 204—Outer Continental Shelf exploration and development administration*

This section amends section 5 of the Outer Continental Shelf Lands Act of 1953 by providing detailed requirements for the administration of leasing on the OCS.

*General regulatory authority—Section 5(a).*

Subsection (a) of section 5 is now to provide that leasing be administered by the Secretary of the Interior, the Secretary of Energy, and the Federal Energy Regulatory Commission, in accordance with their respective authority (see discussion on section 2(b)), who are to promulgate all necessary regulations to carry out their responsibilities. These regulations are to be applicable to any lease in effect at the date of promulgation, as well as to any lease to be let in the future. Of course, the appropriate "Secretary" is not required to repromulgate regulations already consistent with the 1978 amendments. He may retain present appropriate and effective rules.

In this section, "Secretary" means the appropriate Secretary with responsibility to promulgate regulations; the Secretary of the Interior, the Secretary of Energy, or the FERC.

Minor grammatical and structural differences between amended section 5(a) in the House amendment and the Senate bill have been reconciled.

The original subsection (a) of section 5 of the OCS Act granted very broad authority, with few guidelines, to promulgate regulations. The amended subsection, while not limiting the generality of the power granted to promulgate any appropriate regulation, does provide statu-

tory guidelines and requirements for certain types of regulations, and together with the requirements of other subsections provides a mechanism for coordinated bureaucratic action.

The Senate bill specifically provides that regulations apply "as of the date of their promulgation". The House amendment contains no such specific language. The conference report provides that they apply "as of their effective date," to all operations conducted under a lease or permit issued or maintained under this act, thus explicitly adopting the intent of both versions.

The House amendment provides that in formulating and promulgating regulations on matters which may affect competition, the views of the Attorney General and the Federal Trade Commission are to be requested and then to be given "due consideration". The Senate bill provides for such requests and consideration only as to the views of the Attorney General. The conference report adopts the Senate language but specifies that in reviewing regulations, and preparing comments, the Attorney General must consult with the Federal Trade Commission.

Accordingly, the Secretary is only mandated by this section to request the opinions of the Attorney General regarding competition matters.

Of course, under the general authority in section 5(a) for the proper promulgation of appropriate regulations, the Secretary may consult with any other appropriate department or agency, including the Federal Trade Commission.

In addition, the conferees expect that the Secretary give consideration to the views of other federal agencies (such as the Federal Trade Commission) with respect to the competitive impact of the proposed regulations. The Secretary should make available to those agencies whatever information or data the agencies require to analyze adequately the competitive impact of the regulations.

After the Secretary makes a request as to advice on regulations, the Attorney General must consult with the Federal Trade Commission regarding competition matters. He should do so, of course, in an expeditious manner, to assure FTC input and no delays in the regulatory adoption procedure.

The Attorney General may then submit any views or recommendations to the Secretary, but he is not required to do so. Any recommendations or views of the Attorney General, after consultation with the Federal Trade Commission, must be submitted expeditiously. In accordance with administrative procedures concerning all regulations, views must be submitted during the appropriate comment period. If no views or recommendations are submitted within the appropriate time frame, the Secretary is free to promulgate regulations.

No other agency, including the Federal Trade Commission, is barred from independently submitting views or recommendations to the Secretary.

To allow thorough and adequate consideration of any views and recommendations, any views or recommendations must set forth the reasons, including the pertinent factual and policy considerations and legal precedents, if any, which led to such views or recommendations. The failure of the Attorney General to submit views, or the Secretary

to accept recommendations, are not an independent basis for a cause of action by a third party.

*Suspension—Section 5(l) (1)*

The conference report adopts the almost identical provision in both the Senate bill and the House amendment, dealing with suspensions of operations or activities.

The Senate bill provides for suspension at the request of lessee, "in the interest of conservation". The House amendment provides for such requested suspensions when "in the national interest". The conference report is the same as the House amendment—thus specifically granting a broader basis for a grant of a requested suspension, including allowing the grant of requested suspensions to facilitate timely development of a lease.

The House amendment allows suspension at the request of lessee "to allow for the construction or negotiation for use of transportation facilities". The Senate bill provides for suspension at the request of a lessee "to allow for the unavailability of transportation facilities". The conference report is the same as the House amendment.

The conference report provides that the Secretary of Interior, after authorizing a suspension either at the request of a lessee or, on his own, because of a threat of "serious, irreparable or immediate harm," shall extend a lease equivalent to the period of suspension unless the basis for the suspension is the result of gross negligence, or willful violation of applicable regulations or lease or permit terms. In determining whether the Secretary of Interior should deny an extension because of gross negligence, in complying with, or willful violation of, diligence requirements, he should solicit and consider written comments from the Secretary of Energy.

The present requirement that leases are to be generally extended so long as oil and gas is being produced is retained and clarified.

*Cancellation—Section 5(a) (2)*

The conference report adopts a comprehensive provision, based on similar language in the Senate bill and House amendment, authorizing cancellation of a lease or permit, in appropriate circumstances, because of probable serious harm or damage.

The Senate bill in paragraph 5(a) (2) provides that cancellation is not to occur until there has been suspension for a 5-year period, or a lesser period at the request of a lessee. The House amendment contains no such provision. The conference report follows the Senate bill, providing for cancellation only after a 5-year suspension period, or a lesser period at the request of a lessee.

The Senate bill contains detailed provisions for the determination of compensation after cancellation with no fault involved—as the lesser of (1) fair value of rights or (2) excess of expenses over revenues. The House amendment provides that such cancellation "shall not foreclose any claim for compensation as may be required" by the Constitution or law. The House receded, and the conference report language is the same as the Senate bill, providing for a two-step formula for new leases and a one step formula—fair value of rights—for old leases. Thus, under 5(a) (2), explicit authority is given to the Secretary to cancel a lease; and once a cancellation without fault

occurs, a lessee is entitled to compensation according to the appropriate formula.

In deciding whether to order a cancellation, the Secretary of the Interior is to solicit and consider written comments from the Secretary of Energy as to the advantages and disadvantages of cancellation as against the advantages and disadvantages of development and production.

#### *General provisions on regulations*

The Senate bill contains provisions requiring regulations for the sale of royalty, net profit or purchased oil and gas, for use of new bidding systems and for citizen suits. The House amendment contains no such requirements in this section. The Senate receded and the conference report does not include these provisions in this section. Specific requirements are included later in the conference substitute in those sections dealing with royalty or purchased oil and gas, citizen suits, and bidding systems.

#### *Clean air*

The House amendment requires regulations for compliance with national ambient air quality standards and requirements (8), and for the establishment of air quality standards for OCS operations (9). The Senate bill contains no such provisions. The conference report does not adopt a paragraph (9) but does include a revised paragraph (8), of section 5(a) of the House amendment, to provide for regulations to be promulgated by the Secretary of Interior for compliance with national ambient air quality standards pursuant to the Clean Air Act, to the extent that the activities under the OCS Act significantly affect the air quality of a State.

The Secretary of Interior is to promulgate regulations implementing this paragraph. The standards of applicability the conferees intended the Secretary to incorporate in such regulations is that when a determination is made that offshore operations may have or are having a significant effect on the air quality of an adjacent onshore area, and may prevent or are preventing the attainment or maintenance of the ambient air quality standards of such area, regulations are to be promulgated to assure that offshore operations conducted pursuant to this act do not prevent the attainment or maintenance of those standards. The terms "may have" and "may prevent" refer to the Secretarial judgment regarding future consideration of exploration plans, or development and production plans, in which the potential for "significant effect" is analyzed prior to approval and thus commencement of the proposed activities.

The conferees agreed that if an approved State implementation plan has ambient air quality standards which are more stringent than the national ambient air quality standards, the Secretary of the Interior shall, with appropriate regulations, assure that offshore operations conducted pursuant to this act do not prevent the attainment of those State standards, if the air quality of that State is significantly affected by such offshore operations. These State standards and any national standards would not, however, apply to the quality of air above the OCS itself, or to OCS activities located in other parts of the country.

The conferees' intent was that the regulations promulgated by the

Secretary not generally require that the air mass above the OCS itself be brought into compliance with national or State ambient air quality standards but that regulations might be appropriate for the air above or near an artificial installation or other device (platform), so that emissions from such source is controlled to prevent a significant effect on the air quality of an adjacent onshore area.

Other provisions in the conference report provide that exploration plans, and development and production plans, are to comply with any regulations promulgated pursuant to section 5(a)(8) of the amended OCS Act. Thus, in considering approval, modifications, and disapproval of a submitted exploration plan, or a development and production plan, the Secretary is to insure compliance with any applicable regulations promulgated, pursuant to section 5(a)(8).

The conferees do not intend that the application of section 5(a)(8) regulations will interfere with the time periods provided in the conference report for review and approval of explorations plans, and development and production plans. The conferees expect that these regulations will be implemented consistently with the timetables established by these amendments.

The managers were aware that on April 13, 1978, the Environmental Protection Agency made a notice of determination that the Clean Air Act, as amended (42 U.S.C. sec. 7401 et seq.) and regulations promulgated thereunder, apply to activities on the Outer Continental Shelf when such activities could affect the air quality of an adjacent State.

By their adoption of requirements for regulations for compliance with air quality standards, the conferees do not intend to supersede the Clean Air Act or the responsibilities of the EPA Administrator. There is no intent to affect, extend or reduce, whatever present authority the Environmental Protection Agency has in applying and enforcing the Clean Air Act, including the use of EPA's permitting authority.

Specifically, the conferees intend that the Secretary of Interior shall be guided by the Clean Air Act, in consultation with the Environmental Protection Agency, in promulgating regulations to maintain consistency with ambient air quality standards, and its procedures establishing the technological means for controlling air emissions.

It is expected that some activities may not have significant effects because of distance from shore or meteorological conditions that blow the pollution out to sea. If an OCS activity or facility is determined to have no such significant effect, when, for example, it is located many miles from the coast, the requirements of the regulations under section 5(a)(8) would not apply.

#### *Pipeline rights-of-way*

The original OCS Act of 1953 provides in section 5(e) for rights-of-way for pipeline purposes for the transportation of minerals. The conference report adopts certain technical changes to this subsection from the House amendment and Senate bill.

The House amendment provides in section (5) (e) for regulations to be prescribed by "the Secretary (of Interior), or where appropriate, the Secretary of Transportation." The Senate provides for regulations and conditions as may be prescribed by "the Secretary (of Interior) . . .

not inconsistent with regulations promulgated by the Secretary of Transportation under the Natural Gas Pipeline Safety Act of 1968." The conference report is the same as the House amendment.

The House amendment provides in section (5) (e) for regulations and conditions "including (as provided in section 21 (b) of this act) utilization of the best available and safest technology for pipeline burial and other procedures." The Senate bill provides for conditions and regulations "including assuring maximum environmental protection by utilization of the best available and safest technology, including the safest practices for pipeline burial." The conference report follows the Senate bill, with the addition of the phrase "(as provided in section 21 (b) of this act)" from the House amendment. Section 21 (b), as will be discussed later, notes that more than one technology may be acceptable as "the best available and safest." To emphasize the point, a technical change was adopted to make "technology" plural.

The House amendment also provides for nondiscriminatory pipeline transportation or purchase as to oil or natural gas "produced from such lands in the vicinity of the pipeline." The Senate bill contains no such production area reference. The conference report follows the Senate bill and contains no such reference.

A number of technical changes were made in 5(e) to conform the subsection to present law. The "Federal Power Commission" is changed to "Federal Energy Regulatory Commission." The phrases "in the case of gas and Interstate Commerce Commission" and "in the case of oil" were stricken. And the "Administrator of the Federal Energy Administration" was changed to the "Secretary of Energy."

#### *Pipeline competition*

The Senate bill alone contains a subsection (f) detailing the competitive principles for pipeline transportation of OCS oil and gas. The provision in the Senate bill is intended to (1) prevent "bottleneck monopolies" and other anticompetitive situations involving OCS pipelines and (2) promote efficiency and sound planning involving pipeline sizing. The House amendment contains no such provision. The conference report adopts the provision of the Senate bill with an amendment. The agreed-to subsection (f) provides for open and nondiscriminatory access to apply to all pipelines and is a reaffirmation and strengthening of subsection 5(e), which provides for the transport or purchase of all OCS oil and gas "without discrimination."

In addition, in the case of new pipelines, except in the Gulf of Mexico and Santa Barbara Channel, the Secretary is given the discretion to order an expansion of throughput capacity. However prior to doing so: (1) There must be a specific request by a shipper, owner or nonowner; (2) there must be a full hearing after due notice; (3) there must be a finding that expansion is within technological limits and economic feasibility.

If such expansion is ordered, then the requesting shipper must be responsible for bearing the proportionate share of costs and risks related to the expansion.

The conferees recognize that there may be circumstances in which it would be appropriate and fair to all concerned for the company requesting expansion of a pipeline's throughput capacity to pay the

pipeline owner both (1) a proportionate share of the incremental cost associated with the expansion, and (2) a proportionate share of the current value of the pipeline.

If, for instance, an expenditure of \$14 million for new pumps would double the throughput capacity of a pipeline having a current value of \$200 million, it might be entirely fair and reasonable under all the circumstances—especially those involving the promotion of financial incentives and competition and the protection of investments—for the company requesting the expansion to pay a share of the \$14 million and a share of the \$200 million. If the requesting company had to pay only a share of the \$14 million, it might be able to take full advantage of the expansion without having to bear any of the cost or risk previously assumed by the pipeline owner.

The language agreed to by the conferees, therefore, authorizes a determination to be made whether the requesting company should pay the pipeline owner a portion of the current value in addition to a portion of the incremental cost of expansion.

Whenever it is determined that the requesting company should bear a proportionate share of the costs and risks of the pipeline itself and not just the expansion, the share should not exceed the expected percentage of the company's average throughput. In addition, the price of such share should be consistent with rate base and rate of return regulations, and payment in appropriate circumstances, may confer to the requesting company an equivalent portion of the ownership and control of the pipeline.

The conferees were explicit that expansion may not be ordered under this section for any pipeline operating in a developed area (the Gulf of Mexico and the Santa Barbara Channel) and for any pipeline authorized prior to the date of enactment of this bill.

The conferees believe that provisions for nondiscriminatory access and expansion of capacity upon request are ordinarily not appropriate for feeder lines to a facility where oil and gas are first collected, or where oil or gas are first separated, dehydrated, or otherwise processed. Thus, in most cases, such lines would be exempted from the requirements of this subsection. Such exemption, however, is to occur only after a review and if necessary, a hearing, and then an appropriate order or regulation.

In conformity with present agency responsibility, this subsection provides that the application of competition principles are to be undertaken by the Department of Energy and FERC where appropriate. The discretionary decision of throughput expansion is to be made by FERC.

In implementing this subsection and applying competitive principles, the Secretary of Energy and the FERC are to consult with and give due consideration to the views of the Attorney General, who in turn is to consult with the Federal Trade Commission. Once again, in submitting his views, the Attorney General is to set forth the reasons for his views, and any recommendations, including the pertinent factual and policy considerations and legal precedents, if any. No independent cause of action is created by this consultation requirement. Therefore, the failure of the Attorney General to submit his views, or the insufficiency of the reasons given for his views and recommenda-

tions, are not to be an independent basis for a law suit. Furthermore, the conferees do not intend to abridge any existing authority of any agency or department, including the Federal Trade Commission, to solicit or give comments as to this or any other provision of this bill or actions taken in accordance with such provisions. (See discussion in this statement of managers on section 5(a) as to Attorney General and Federal Trade Commission role, responsibilities and independent authority.)

Finally, as specifically stated in paragraph (4) nothing in this subsection on pipeline competition is intended to alter present authority, under any other provision of law, of any agency of the United States with respect to pipelines on or across the OCS.

#### *Rates of production*

Both the House amendment and Senate bill provide for production of oil and gas at determined rates. Rates must be set that are consistent with any rule or order issued by the President in accordance with other laws. If no such rate or order has been issued, rates must be consistent with regulations established to assure maximum production as described in section 5(g)(2). The conference report adds a technical change, adding "of Energy" to make explicit that the reference to "Secretary" to promulgate regulations as to production rates in this provision means the "Secretary of Energy" in accordance with section 302(b)(4) of the DOE Act.

The Senate subsection as to rates of production includes a paragraph (3) amending the Energy Policy and Conservation Act of 1975 to require the publication of final rules on the maximum efficient rate of production. The House amendment contains no such language. The conference report follows the House amendment, and paragraph (3) from the Senate bill was deleted.

#### *Coordination of and recommendations on OCS activities*

The House amendment contains a subsection providing for the coordination of activities of all Federal agencies by the Secretary of Interior, and for notification to the Secretary of Interior of all OCS related actions by any Federal department or agency.

The Senate bill contains no such provisions. The conferees adopted the House amendment with an amendment which provides that, in order to facilitate coordinated Federal action on OCS activities, the head of any Federal department or agency taking any action significantly affecting OCS activities is to notify the Secretary of the Interior of this action. The Secretary is thereafter to notify Governors of affected States. After such notification, the Secretary may recommend changes to the agency or department proposing such action.

The Governor of any State shall have the right to be notified of any action. However, no third party, including citizens, shall have the right to raise as a basis for legal action, the failure of the Governor to be notified. The head of the Federal departments or agencies which are to submit notification of an action to the Secretary can be compelled by the Secretary to comply with this coordination mandate. However, the failure of a department or agency to submit such information shall not be a basis for an independent cause of action by any third party. Furthermore, the failure of the Federal department or

agency to accept any recommendations by the Secretary shall not be a basis for an independent cause of action by any third party.

The Secretary of Interior, by receiving notice and information on all actions affecting the OCS, will be able to evaluate the overall effect of any particular Federal decision on OCS policy. In addition, the Governor shall be able to look to one person—the Secretary—to receive information concerning any Federal Government action affecting OCS areas impacting on his jurisdiction.

*Section 205—Revision of bidding and lease administration*

*New bidding systems*

Section 205 amends section 8 of the OCS Lands Act by providing new bidding options and procedures.

The original OCS Lands Act of 1953 provides that leases are to be awarded to the highest responsible qualified bidder, through competitive and sealed bidding procedures, on the basis of a cash bonus, with a fixed royalty of no less than 12½ percent, or on the basis of a royalty, at no less than 12½ percent, and a fixed bonus. Subsection (a) of section 8 is amended to still require competitive, sealed bidding procedures and to still authorize bonus and royalty bids, but now also to authorize a number of new bidding systems.

Under this act, and in accordance with the DOE Act, the Secretary of the Interior retains the power to issue leases. The Secretary of Energy is to retain responsibility for promulgating regulations implementing alternative bidding systems (see sec. 302(b)(2) of the DOE Act). Both Secretaries are to continually consult with each other in accordance with sections 303(b) and 303(c) of the DOE Act.

The House amendment provides in (a)(1) for regulations for the depositing of cash bids in an interest-bearing account and for earned interest to be paid to the Treasury when bids are accepted, and to unsuccessful bidders if bids are rejected. The Senate bill contains no such provision. The conference report follows the House amendment by providing for such regulations.

Both the Senate bill and the House amendment contained specific provisions authorizing variable royalty, variable net profit, fixed net profit, and work commitment bidding alternatives but use different language and structure to do so. The conference report adopts the Senate bill language and form.

Both the Senate bill and House amendment authorize the use of non-enumerated alternative bidding systems or modifications of bidding systems specifically described.

The Senate bill provides that any nonenumerated system can only be used after having been submitted to Congress and then only if neither House passes a resolution of disapproval within 30 days. The House amendment simply provides that new bidding systems shall be promulgated by rule, after an opportunity for a hearing, and then transmitted to Congress. No provision for disapproval, specifically as to use of new bidding systems, by Congress is included in the House amendment. The conference report follows the Senate bill and contains a one House veto provision for nonenumerated bidding systems, as paragraph (a)(4).

Any such nonenumerated system or modification, while it can include any number of fixed terms, conditions, or parts, can only have one

variable term, condition or part, which would be the basis for the bidding and selection of the successful bidder or bidders.

To comply and conform with the DOE Act, the conference substitute provides that it is the Secretary of Energy who is to submit any non-enumerated or modified bidding system to Congress but that it is the Secretary of Interior who is to conduct lease sales, using such bidding system, if not vetoed by either the House or Senate within the assessed time.

Both versions of S. 9 provide for deferment and installment payments of cash bonuses. The Senate bill provides that the final payment should be made no later than 5 years from the lease sale, or on the date of approval of development and production plan, whichever occurs first. To insure nondilatory action, the House amendment provides in paragraph (a) (2) for final payment no later than 5 years from the date of the lease sale. The conference substitute is the same as the House amendment.

The Senate bill provides for the use of the so-called dual leasing system in the Outer Continental Shelf off of Alaska. The House amendment contains no such provision. The Senate receded and the conference report contains no such provision. Hence, no authorization was granted for leasing just for exploration with exploration lessees sharing in the costs of exploration and receiving a share of revenues from the sales of subsequent development and production leases. It is expected, however, that as part of the requirements of this section that there be a report on bidding options, there should be an evaluation of this so-called dual leasing option—its advisability, practicality, costs, benefits, and risks.

#### *Use of systems and standards*

The House amendment contains a provision specifically providing for establishment of previously unauthorized bidding systems, or modifications of such systems, only by rule, after an opportunity for a hearing. The Senate bill contains no such provision. The House receded and this provision is not specifically included in the conference report. The conferees intend that implementation of the newly authorized system be in accordance with the requirements of this act, the Administrative Procedures Act (APA) and other law. Specifically, section 5(a) (1) of this act, as retained in the conference report, provides that competitive bidding regulations are to be "promulgated in advance" of any utilization. Such regulations are promulgated in accordance with requirements of the APA. In addition, section 302(b) (2) of the DOE Act provides authority for the Secretary of Energy to promulgate regulations for use of alternative bidding systems. Such regulations are promulgated in accordance with section 501 of the DOE Act. The conferees expect the Secretary of Interior and the Secretary of Energy to continue to exercise their appropriate respective statutory responsibilities in using new bidding systems.

The House amendment contains a provision detailing the purposes and policies of the new bidding systems. The Senate bill contains no such provision, but a statement of purposes and policies was included in its committee report. The conferees agreed that an expression of purpose and policies was more appropriate for this statement than for

the text of the OCS Act and therefore the conference report follows the Senate bill and contains no such provision.

The conferees intend that in utilizing the new bidding alternatives, a variety of considerations should be taken into account, including, but not limited to: (i) Providing a fair return to the Federal Government; (ii) increasing competition; (iii) assuring competent and safe operations; (iv) avoiding undue speculation; (v) avoiding unnecessary delays in exploration, development, and production; (vi) discovering and recovering oil and gas; (vii) developing new oil and gas resources in an efficient and timely manner; and (viii) limiting administrative burdens on government and industry.

The House amendment contains provisions (1) generally authorizing the requiring of submission of bids based on more than one bidding system and (2) allowing for submission of bids on the basis of more than one bidding system, in order to establish statistical information. The Senate bill contains no such language. The conference report adopts the House language, with an amendment. The Secretary can use the authority of this subparagraph, and require submission of bids based on more than one system, but only for statistical purposes and can use the authority in bidding on not more than 10 percent of all tracts offered each year.

The authority to require bidders to submit bids on the basis of more than one bidding system is to be utilized for the purposes of statistical information, and the actual system upon which a lease will be awarded is to be selected on a random basis. The conferees note that the Secretary of Energy and the Secretary of the Interior maintain their respective responsibilities on alternative bidding systems in accordance with section 302(b)(2), and sections 303(a)-(c) of the DOE Act.

#### *Mandate on use of bidding systems*

The Senate bill provides that during each of the next 5 years, bonus bids cannot be utilized in more than 50 percent of the leases offered in previously undeveloped areas. The House amendment provides that new bidding systems are to be utilized in no less than 20 percent and no more than 50 percent of the leases offered in lease sales held for all areas during each of the next 5 years. The conference report follows the House amendment with an amendment. Bidding systems other than bonus bidding, including royalty, net profit, work commitment, and nonenumerated systems, are to be utilized in at least 20 percent and not more than 60 percent of the tracts offered for leasing in all OCS areas during each of the next 5 years.

The Senate bill provides that new leasing systems are to be applied using a random selection method. The House amendment contains no such provision. The Senate receded and the conference report contains no such provision.

Although there is no requirement for random selection, the Secretary, in setting forth systems for use on tracts, shall seek to secure a fair selection of different methods on different tracts. The purpose of such a selection is to assure that adequate information is obtained as to relative advantages and disadvantages of the various bidding systems, including the front-end bonus bid systems, as applied to different types of tracts, having different expectations of the amount of hydrocarbons that can be recovered.

The Senate bill provides that the 50-percent limitation on the use of bonus bidding can be waived during the first year by a finding that it would unduly delay development. Thereafter, it can be waived after the submission of a report to Congress, and, if there is no resolution of disapproval by either House, within 30 days after receipt of such report. The House amendment provides that both the minimum on use of new systems and maximum on the use of new systems can be waived if the Secretary determines that such waiver is necessary to comply with the bidding purposes established under the OCS amendments. No procedure for congressional disapproval is included in the House amendment. The conference report adopts the House approach.

The Secretary of the Interior is given the discretion to waive the minimum or maximum requirement for the use of bidding systems other than bonus bidding, based on a determination that either the minimum or maximum percentage level is not consistent with the purposes and policies of the act. Such a determination on the part of the Secretary of the Interior is to be made after consultation with the Secretary of Energy in light of the responsibilities of the Secretary of Energy as to fostering competition and as to promulgating regulations for the use of alternative bidding systems (see secs. 302(b)(1) and 302(b)(2) of the DOE Act.) In addition, the Secretary of Interior retains authority as under present law to reject any bid that is not, in his opinion adequate.

#### *Bidding system report*

Both versions of S. 9 require that within 6 months after the end of each fiscal year, the "Secretary" shall submit a report to Congress concerning the use of the various bidding options provided in this subsection. The conference report adopts a technical amendment specifying that it is the Secretary of Energy who is to submit such report "in consultation with the Secretary of the Interior." The bidding system report is both factual and analytical. It is to include a schedule of lease sales held in the past year or to be held in the following year and the bidding systems which have been or are to be used. The Secretary of Energy is to obtain this factual data from the Secretary of Interior and include it in this report. The report is also to include an analysis and evaluation, if applicable, of why a system has not been or will not be utilized and if applicable, why the bonus bid system was used or is to be used in more than 60 percent of the areas actually leased. This analysis and evaluation is to be undertaken by the Secretary of Energy.

The Department of Energy is to solicit the written comments of the Secretary of the Interior as to this analysis on various bidding options; and such comments and recommendations, if not accepted by the Secretary of Energy as part of his statement, shall be separately included in any report.

#### *Lease sale announcement and review*

The House amendment contains a provision providing that 30 days prior to a lease sale, a notice must be sent to Congress and published in the Federal Register, identifying bidding systems to be used in that sale, designating tracts having the various systems, and why a system is being used for a tract. The Senate bill contains no such provision.

The Senate receded and the conference report includes the House provision.

The House amendment also contains a provision that the Governor of an affected State, or the chief executive officer of a local government, may request and obtain a public hearing, prior to the initial announcement of the tracts selected for inclusion in a proposed lease sale. The Senate bill contains no such provision. The House receded and the conference report contains no such provision.

The conferees note that present procedures provide for nomination, positive and negative, by all interested parties, including State and local governments. In addition, present procedures, implemented by the Interior Department, pursuant to the National Environmental Policy Act, provide for a public hearing on a draft environmental impact statement, prior to every lease sale. At such a hearing, usually held in the community adjacent to the proposed sale, all interested parties, including State and local governments, may offer comments and suggestions. Such comments and suggestions are to be evaluated and considered by the Secretary in preparing a final environmental impact statement, prior to a lease sale, and then in deciding if, when and how, to conduct such a sale. The conferees deleted the specific mandate for a public hearing on a sale, in light of these present procedures for state and local government and citizen input. This deletion should not be viewed as an attempt to limit public hearings, but simply as an avoidance of duplicative provisions.

*Special rules—net profit and work commitment bids*

The Senate bill contains a provision providing for establishment of rules to govern the calculation of net profits. The House amendment contains no such provision. The conference report is the same as the Senate bill, establishing rules to govern the calculation of net profits.

The Senate bill contains detailed provisions as to the procedures for a work commitment bid. The House amendment does not. The conference report adopts the provisions of the Senate bill on work commitment bidding with an amendment, specifying that 50 percent of all exploration expenditures shall be included in satisfaction of the work commitment.

The conferees adopted the so-called work commitment bidding system as an alternative system. To insure that such system would lead to efficient and expeditious activities, detailed provisions for such a bidding alternative are included. The lessee is to bid an amount equal to the amount to be expended on exploration activities and, if awarded a lease on that amount, deliver either a cash deposit or bond for the amount. This is a fixed amount.

One-half of exploration costs incurred by the lessee are to be credited against the deposit or bond, which can be periodically reduced. Any amounts remaining after completion of exploration or the lease term shall be paid in cash to the Secretary.

To insure that unnecessary work is not performed, two safeguards are included. First, the Secretary retains the authority to monitor exploration activities, including approving, modifying, or disapproving exploration plans. Second, the lessee must put up 50 percent

of his own funds, as work continues, as a match to the credit against his work commitment bid. That is, for every dollar spent on exploration, the lessee's cash deposit or bond principal would be reduced by one-half dollar, rather than a full dollar. This would assure the element of risk. If an operator is awarded a lease based on a dollar-figure work commitment bid, he would have to spend twice the bid amount on exploration to satisfy the commitment. Half the amount he spent on exploration would come from his own account, and would not be "house money."

Regarding work commitment bidding and other bidding systems, the Secretary of the Interior is to establish lease terms in accordance with applicable regulations promulgated by the Secretary of Energy (see secs. 302(b) (1)-(4) and 302(c) of the DOE Act).

#### *Lease terms*

The House amendment provides for a lease term of 10 years where the Secretary finds that such longer period is necessary in areas "because of unusually deep water or other unusually adverse conditions." The Senate bill provides for a 10-year lease term "in areas of unusually deep water or unusually adverse weather conditions." The conference report is the same as the House amendment.

Both the Senate bill and House amendment, and thus the conference report, provide that the Secretary of Interior is to include in leases a requirement that the lessee offer 20 percent of "crude oil, condensate, and natural gas liquids" produced on a lease to "small refiners" or "independent refiners" as defined in the Emergency Petroleum Allocation Act of 1973.

The conferees note that this provision refers to the definition of "small refiners" or "independent refiners" in the Emergency Petroleum Allocation Act of 1973, Public Law 93-159, as found in paragraphs (3) and (4) of section 3 of that act. The reference in this section of the conference report is to those definitions only and not to the scope nor the application of the 1973 Emergency Petroleum Allocation Act of 1973.

Lease terms pursuant to subsection 8(b) are to be set by the Secretary of the Interior. However, such terms must be consistent with applicable regulations of the Secretary of Energy, for example, as to competition, diligence, and production rates. (See DOE Act, sec. 302(b)).

#### *Lease sale competition review*

The House amendment and the Senate bill contain different provisions for a lease sale competition review. The Senate bill provides for a review by the Federal Trade Commission and provides that unless fitting into certain exceptions, there has to be a public hearing whenever there is a finding of "a situation inconsistent with the anti-trust laws," and the Secretary nevertheless proposes to issue the lease, despite the finding. The House amendment provides for review by the Attorney General and the Federal Trade Commission. The House amendment does not provide for the automatic requirement of a public hearing or findings. The conference report in subsection 8(c) adopts the House provisions on lease sale competition reviews with several changes.

In subsection 8(c), responsibility for the review of the competitive effects of a lease sale is given to the Attorney General. However, the Attorney General is to consult with the Federal Trade Commission in making any review, in securing information and in making recommendations. It is the responsibility of the Secretary of the Interior to provide such information as may be required to conduct any competition review. To avoid delays, and to expedite the review process, it is also anticipated that the Secretary will provide all necessary information (as requested by the Attorney General in consultation with the Federal Trade Commission) simultaneously to the Attorney General and the Federal Trade Commission.

The conferees did not accept a provision in the House amendment that would have specifically made a lease sale review an "antitrust investigation" within the meaning of the Antitrust Civil Process Act (15 U.S.C. 1311 et seq.). The conferees believe that a lease sale competitive review is a distinct type of review and not an "investigation."

It should be noted that section 11 of the Energy Supply and Environmental Coordination Act of 1974 authorizes the Department of Energy to obtain "energy information." Of course, information for a review under this subsection may also be obtained by the Secretary of Energy and forwarded to the Attorney General and the Federal Trade Commission pursuant to section 11 of the Energy Supply Act. In addition, the Federal Trade Commission has the independent authority under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) to secure necessary records and information and to use this data in its consultations with the Attorney General (see 15 U.S.C. 46, 49). The conferees intend that the Federal Trade Commission is to retain its full authority to obtain records and information and is to retain its full authority to exercise this power in appropriate circumstances, including utilization of this power to adequately consult with, and give recommendations to, the Attorney General. Because information gathering under such authority may be time consuming, the conferees expect both the Department of Interior and the Department of Energy to expedite lease sale reviews by forwarding to the Attorney General and the Federal Trade Commission any information which the Attorney General, after consultation with the FTC, may request.

The conferees do not intend to affect the limitations, under present law and this act, on the release of proprietary or confidential information gathered from a company pursuant to the procedures established for a competition review under this subsection.

The Attorney General is given the discretion to make a review of a lease sale or sales and to make recommendations as to whether such sale or sales indicate a situation "inconsistent with the antitrust laws". The Attorney General is not required to make a review of any or all sales or to make any recommendations as to any or all sales. His decision to undertake or not undertake a review, and to make or not make any recommendations must be after consultation with the Federal Trade Commission.

It is anticipated that any report of the Attorney General will include a section containing the results of his consultation with the Federal Trade Commission, including any specific recommendations and comments submitted by the Federal Trade Commission. In the

interest of maximizing the time the Secretary will have to review antitrust comments and recommendations, the FTC may submit a copy of its comments and recommendations directly to the Secretary.

While the procedures under this subsection, including decisions to review or not review, the actual review itself, and the recommendations to the Secretary are to be undertaken by the Attorney General after consultation with the Federal Trade Commission, the conferees did not, in any way, intend to affect any existing power and authority to conduct investigations and reviews and to make recommendations. Specifically, the Federal Trade Commission Act, 15 U.S.C. 45, authorizes the Federal Trade Commission to conduct proceedings on unfair methods of competition; 15 U.S.C. 46, authorizes the Commission to "gather and compile information", to "investigate" businesses and to make reports on this information and the investigations, including any recommendations, to the President, Congress, and the public. Nothing in this subsection is intended to limit this authority.

As with all other recommendations to be made by the Attorney General, the conferees believe that such recommendations should be made as promptly as possible. To insure this, the conferees expect the Secretary of Interior to forward any requested information to the Attorney General and the FTC as soon as possible. In addition, to allow thorough and adequate consideration of a recommendation, any recommendation should set forth the reasons for any recommendation, including the pertinent factual and policy considerations, and legal precedents, if any. No independent cause of action, however, is created by this mandate for reasons to be given. The failure to give adequate reasons or supporting facts or to give any reasons or facts, or to make any review or give any recommendations, is not an independent basis for a legal challenge to any lease sale or lease award.

The Secretary of Interior is free to accept or reject any recommendation. He may accept a bid and award a lease despite any recommendations from the Attorney General, so long as he notifies the lessee and the Attorney General of the reasons for his decision. He may, of course, accept the recommendations and refuse to accept an otherwise qualified bid and not award a lease. There is no requirement of a hearing prior to this decision of the Secretary. In addition the failure of the Secretary to accept a recommendation is not a basis for an independent cause of action against a sale or lease award.

The decision of the Attorney General to conduct or not conduct a review, to make or not make a recommendation, and the decision of the Secretary to accept or not accept a recommendation, as already noted, is not to be a basis for an independent cause of action. In addition, under section 8(f) of this act, nothing in this subsection, or anywhere else in the act is to create a defense or to grant immunity from any criminal or civil action for violation of antitrust laws.

Specifically, the conferees intend that the failure of the Attorney General to undertake a review, or to make recommendations, or the failure of the Secretary to accept any recommendation, while it may be introduced in proceedings as relevant evidence, is not to be a bar to any government or private antitrust action.

The conferees, as noted earlier, do not intend to abridge any existing authority of any agency or department to collect data, make

investigations, solicit or give comments, or institute and undertake judicial actions.

The conferees do not intend to abridge any existing right of the Government or a private party to bring a cause of action. However, as noted above, the failure of the Attorney General or the Secretary to act in accordance with this subsection does not create any independent cause of action.

### *Diligence*

The House amendment provides that no lease may be issued if the Secretary finds that the bidder is not meeting due diligence requirements on other leases. The Senate bill provides that no application for a lease may be submitted if the Secretary finds, after notice and hearing, that the applicant is not meeting due diligence requirements on other leases. The conference report adopts the language of the Senate bill in subsection 8(d) with a technical amendment substituting "bid" and "bidder" in lieu of "application" and "applicant," respectively. Determinations as to diligence on other leases are to be made prior to lease sale and companies are to be informed prior to such sale if they are disqualified by this provision from bidding on this sale. Such a determination may be appropriately made through a list of ineligible companies—which can be revised periodically. Such a procedure has been utilized in applying present joint bidding bans.

This subsection is to be carried out by the Secretary of the Interior.

### *Sale or exchange of leases*

The House amendment provides that no lease may be sold, exchanged, assigned or transferred except with the approval of, and subject to renegotiation by, the Secretary, after consultation with the Attorney General and the Federal Trade Commission. The Senate bill contains no comparable provision. The Senate receded and the conference report in subsection 8(e) adopts the language of the House amendment with an amendment, striking "and subject to renegotiation" and "and the Federal Trade Commission."

The intent of this provision is to codify existing practice, authorized by the 1953 act, and add Attorney General input on the competitive impacts of a sale, exchange, assignment or other transfer of a lease. The Secretary shall retain his power to approve or disapprove a sale, transfer, assignment or exchange. Prior to approving or disapproving, he is to consult with and consider the views of the Attorney General.

### *Federal-State agreements*

Provisions in both versions of S. 9 similarly authorize Federal/State agreements as to areas within 3 miles of the seaward boundary of any coastal State but contain minor grammatical and structure differences. The conference report resolves those differences while maintaining the intent of both versions.

The House amendment provides that the Secretary shall "deposit" in a separate account in the Treasury of the United States certain revenues. The Senate bill provides that the Secretary shall "impound" in whole or in part, in a separate account in the Federal Treasury, revenues. The conference report adopts the House language.

The House amendment provides that nothing in this section is to limit or modify the rights of any State to jurisdiction or title to

submerged lands. The Senate bill contains no comparable provision. The conference report adopts the House language.

#### *Joint bidding ban*

The House amendment provides that the Secretary may permit joint bids unless more than one of the bidders is chargeable with an average daily production of 1,600,000 barrels a day or more. The Senate bill does not include an amendment to the OCS Act, but amends the Energy Policy and Conservation Act of 1975, to allow joint bids involving bidders having an average daily worldwide volume of 1,600,000 barrels or more, when "it is determined that exploration and development will occur only if the exemption is granted," for areas "determined to be extremely high risk lands or to present unusually high cost exploration or development problems." The House amendment contains no such exemption. The House receded and the conference report adopts the Senate provision with an amendment.

The conference report amends subsection (c) of section 105 of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6213 (c)).

With a limited exception, there is a ban on joint bidding by two "majors" pursuant to appropriate regulations, where more than one of bidders controls average daily worldwide production of 1.6 million barrels a day. The Secretary may, but does not have to, exempt a bidder or bidders from the ban in the bidding for leases anywhere involving high cost exploration or development problems.

No such exemption may be granted unless there is a finding, after an opportunity for a hearing, that exploration and development will only occur if such exemption is granted. Such a finding is nonreviewable, unless arbitrary or capricious. An exemption can only be granted if requested by a potential bidder and the potential bidder has the burden of coming forward with factual evidence to support his request. A finding that exploration and development will only occur if there is an exemption must be based on demonstrated evidence. Such evidence supporting the Secretary's determination includes, but is not limited to, an economic analysis demonstrating the need for such an exemption; a financial statement of potential joint bidders demonstrating their inability to bid without such an exemption; the number of nominations for tracts or lease areas to be exempted; prior experience in bidding and lease awards in the lease area or in lease areas with similar problems; and geological, environmental or safety information detailing special, unique or increased costs.

#### *Section 206—Outer Continental Shelf oil and gas exploration*

Section 206 amends section 11 of the OCS Act, providing the procedures for exploration of areas on the Outer Continental Shelf.

#### *Authority*

The Outer Continental Shelf Lands Act of 1953 provides:

SEC. 11. GEOLOGICAL AND GEOGRAPHICAL EXPLORATIONS.—Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the Outer Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area.

The Senate bill provides in subsection 11(a)(1) that "the Secretary or any agency of the United States, and any person" authorized can conduct explorations. The House amendment only provides that "any person" authorized can conduct explorations. The conferees decided not to adopt either version's language, but rather to retain the exact language of section 11 of the 1953 OCS Act, regarding exploration authorization. Thus, section 206 does not modify, in any way, the existing language of section 11.

The conferees' action does not indicate any particular interpretation of existing law. Accordingly, the conferees intend to keep in effect and neither limit nor extend whatever authority the Secretary of the Interior and other Government agencies have under existing law.

#### *Exploration plans—Application*

The House amendment provides that 90 days after enactment of this subsection, exploration has to be pursuant to the requirements of this new exploration section, with an exception provided for leases where a drilling permit had been issued prior to the date of enactment. For exploration on leases included in this exception, the House amendment provided that the Secretary is authorized to require such activities to be described in an exploration plan, to require a revised exploration plan, to require a general statement of onshore intentions, and to require the submission of additional information or to establish additional requirements on leases in accordance with his general regulatory authority.

The Senate bill contains comparable exemptions. Specifically, the Senate bill exempts from the requirement of compliance with this new section and any regulations promulgated pursuant to this section, those leases in which a drilling permit had been issued prior to the enactment. In a later subsection, the Senate bill allows the Secretary to approve the exploration plan submitted prior to enactment, which he finds is in substantial compliance with the provisions of this new section and to require the submission of additional information.

The conference report requires compliance with the new provision of section 11 on exploration, except that exploration activities pursuant to any lease for which a drilling permit has been issued or for which an exploration plan has been approved prior to ninety days after the date of enactment, shall be considered in compliance with section 11. The conference report does retain the language of both versions that the Secretary may require the submission of information by a lessee for exploration activities otherwise exempted from new requirements of section 11 and provides that the Secretary retains the authority granted in section 5(a)(1)(B) to order a suspension or temporary prohibition of any exploration activities, and then to require a revised exploration plan to be submitted.

The specific requirements of new section 11, dealing with the submission, contents and review of exploration plans are therefore ordinarily not to apply to exploration activities pursuant to a lease for which a drilling permit has been issued or an exploration plan approved prior to ninety days after the date of enactment of the 1978 amendments. Exploration activities which are excluded by this sub-

section are to be conducted in accordance with existing law and regulations and the terms of any existing permit or plan.

#### *Exploration plans*

Both versions of S. 9 and therefore the conference report require exploration plans to be submitted and reviewed by the Secretary of Interior. Both the House amendment and Senate bill provide for revisions of plans. The intent of both versions is clarified by making it explicit that only "significant revisions" need go through that approval process. In subsection (c) (1), the Conferees adopted an amendment to insure that exploration plans are consistent with regulations prescribed by the Secretary pursuant to paragraph (8) of section (5) (a) of this act, relating to air quality standards where States are significantly affected by OCS activities (see discussion on section 5(a) (8), *supra*).

There are grammatical and technical differences between the House amendment and the Senate bill as to the process and effect of approval, modification and disapproval. These were resolved in the conference report. In addition, the House amendment provides for the possibility of cancellation after a period of suspension, in appropriate circumstances, if an exploration plan cannot be approved, and also provides for compensation after cancellation. Under the Senate bill, when a lessee is eligible for such cancellation, the Secretary may only "delay" approval of the exploration plan. The conference report is the same as the House amendment.

The House amendment provides for a requirement of consistency of any license or permit for any activity in an exploration plan with an approved State coastal zone management program. The Senate bill contains no comparable provision. The Senate receded and the conference report includes the House provision.

#### *Drilling*

The House amendment provides in section 11(g) for the authorization of permits for qualified applicants to conduct "on-structure" exploration. The House amendment requires the offering of such permits at least once during the next two-year period. The Senate bill contains no comparable provision, but does provide in a separate section for a prelease drilling program which may include such on-structure permits (see discussion in section 26, *infra*). The House receded and the conference report contains no such provision. The conferees' action does not indicate any intention to limit, modify, or expand whatever authority the Government has under existing law to grant permits to applicants to conduct drilling operations.

The House amendment in subsection (h) provides for standards and regulations for permits for geological explorations. The Senate bill contains no specific language as to such permits or regulations. The conferees adopted the House provision.

#### *Wilderness—Point Reyes*

The House amendment provides for the exclusion from any leasing or exploratory drilling of any tract within fifteen miles of a wilderness area. This provision was adopted on the House floor and was

intended to apply to only one area in California. The Senate bill contains no comparable provision. The conference report follows the House provision with an amendment, specifying that the exclusion is to apply only to one area in California—Point Reyes.

Point Reyes National Seashore is located 30 miles north and west of San Francisco, Calif. This seashore contains beaches, mountains, and numerous species of flora and fauna. A portion of the seashore has been designated by Congress as part of the National Wilderness Prevention System. It is presently administered by the National Park Service, with oversight by a special panel appointed by the Secretary of the Interior.

The conferees determined that because of the unique recreational, ecological and other qualities of this area, exploration and leasing within 15 miles of Point Reyes should be prohibited.

There are State waters abutting the Point Reyes National Seashore. To avoid the possibility of inconsistent activities, if California authorizes mineral activity in its waters, the exclusion is automatically withdrawn and there is no further bar to Federal OCS activities.

Finally, adoption of this provision is not intended as a precedent as to whether or not similar protection is to be afforded to other present or future wilderness areas.

#### *Reservation by the Congress*

The House amendment contains a section 208 which provides that the Congress can withdraw areas from OCS leasing by passing a concurrent resolution so declaring. The Senate bill contains no such provision. The House receded and the conference report contains no such provision.

#### *Section 208—Annual report*

Section 208 amends section 15 of the Outer Continental Shelf Lands Act to require the Secretary of the Interior to submit an annual report in two parts within 6 months of the end of each fiscal year. The required contents of the report are specified in the subsection and the intent of the language is clear.

One part of the report is to include recommendations and findings as to competition and is to be made after consultation with the Attorney General. The Attorney General may, but need not, submit findings or recommendations, which are to be included in the report of the Secretary of Interior submitted to Congress. The Secretary of Interior is to prepare his report on competition, the second part of his annual report, after consultation with the Secretary of Energy and the Federal Energy Regulatory Commission, and is to receive their written comments within their respective applicable responsibilities. Any comments not accepted by the Secretary of Interior are to be separately included in the report.

The House amendment provides for the competition portion of the annual report to contain an evaluation and description of measures "to insure an adequate supply of oil and gas to" independent refiners and distributors. The Senate bill provides for an evaluation and description of additional measures "to increase the supply of" oil and gas to independent refiners and distributors. The conference report adopts the new phrase "dealing with supplies" of oil and gas to independent refiners and distributors.

SECTION 209—NEW SECTIONS OF THE OUTER CONTINENTAL SHELF  
LANDS ACT*Section 18—Outer Continental Shelf leasing program*

Section 18 establishes a process which will permit the Secretary of the Interior to weigh energy potential, and other benefits against environmental and other risks in determining how, when and where oil and gas should be made available from the various Outer Continental Shelf areas to meet national energy needs.

*Considerations*

The House amendment provides that a leasing program "shall consist of a schedule of proposed sales indicating" the size, timing, and location of activities. The Senate bill provides that the leasing program is to indicate the size, timing, and location and does not specifically provide for it to consist of a "schedule of proposed lease sales." The conference report is the same as the House amendment.

The House amendment includes among the considerations for a leasing program, the sufficiency of resources including equipment and capital to assure exploitation expeditiously. The Senate bill contains no comparable provision. The House receded and the conference report contains no such provision.

The House amendment includes among the considerations for a leasing program, the relative environmental sensitivity and marine productivity of different areas. The Senate bill contains no comparable provision. The conference report is the same as the House amendment.

The House amendment includes among the consideration for a leasing program the policies and plans under the Coastal Zone Management Act. The Senate bill contains no comparable provision. The conference report follows the House amendment and contains no such specific provision as it is included within the consideration of "laws, goals, and policies of affected States."

Both versions contain as a consideration of a leasing program, the receipt of value for lands. The House amendment provides that activities are to be conducted to assure receipt of "fair value for the lands leased and the rights conveyed by the Federal Government." The Senate bill provides for leasing activities to be conducted to assure receipt of "fair market value for the oil and gas owned by the Federal Government." The conference report follows the House amendment, with the addition of the term "market" so as to read "fair market value for the lands leased and the rights conveyed by the Federal Government."

*Preparation of proposed leasing program*

The House amendment provides for a report by the Attorney General and the Federal Trade Commission as to competition aspects of the leasing program during the preparation of any proposed leasing program. The Senate bill contains no comparable provision.

The conference report adopts the Senate language and deletes this provision. However, the conference report does specifically include the Attorney General in consultation with the Federal Trade Commission, as a party to be given input into the preparation of a program.

As just noted, both versions contain provisions for input from appropriate parties during the preparation of a leasing program. The

House amendment specifically provides that the Secretary is to include suggestions "from any interested Federal agency" and "from the executive of any affected local government unit in such an affected State." The Senate bill contains no such specific language. The conference report follows the House amendment with an amendment, providing that the Secretary may solicit and consider suggestions on a proposed leasing program from the head of any local government unit affected by OCS activities, after such recommendations have been submitted to the Governor of the affected State, and also providing that the Secretary may solicit and consider suggestions from any interested Federal agency, including the Attorney General in consultation with the Federal Trade Commission.

The Governor is given discretion to identify—and then solicit and consider the suggestions of—affected local government units. Local governments can, of course, request information from the Governor or Secretary as to OCS leasing activities. Governors must be notified by the executives of any such affected local government units so as to be able to consider their inclusion in his recommendations.

The conferees intend that local governments are generally to act through their State government representatives; and that recommendations are to be forwarded to and by local governments through State governments. In addition, there is to be no independent basis for legal action by a local government unit against activities under this act, or actions pursuant to this act, because of a dispute with a State government as to whether they are "affected" or any alleged failure to consult with, submit data to, or receive the recommendations of a local government.

The House amendment further provides that the Governors of affected States are to solicit comments from the executives of local governments units in his State affected by OCS activities, after the actual proposed program is submitted to them. The Senate bill contains no such specific requirement. The conference report follows the House amendment with an amendment, emphasizing that is up to the discretion of the Governors to solicit comments from representatives of those local governments which the Governors determine will be affected. No responsibility is placed on the Federal Government.

Again, the managers intend that local governments are to act through their State government representatives; and that data and recommendations are to be forwarded to and by local governments through State governments.

There is to be no independent basis for legal action by a local government unit against activities under this act, or actions pursuant to this act, because of a dispute with a State government as to whether they are "affected" or any alleged failure to consult with, submit data to, or receive the recommendations of a local government.

Both versions provide for the submission of a proposed leasing program to appropriate parties. The House amendment provides specifically for submission to the Federal Trade Commission, and through Governors, to local government executives. The Senate bill contains no such specific requirements for submission to these two parties. The conference report follows the Senate bill with respect to the Federal Trade Commission, and does not mention the FTC, and the House amend-

ment with respect to the inclusion of local government executives with an amendment providing that the Governor shall submit a copy of the proposed leasing program to the executive of any affected local government unit but only upon request.

The Governors are to submit the proposed leasing program upon request to heads of affected local governments. No responsibility is placed on the Federal Government by the inclusion of the reference to local governments. There is to be no independent basis for legal action by the executives of an affected local government unit against activities under this act, or actions pursuant to this act, because of any alleged failure of a State government to submit a proposed leasing program to such local government.

#### *Comments on leasing program*

Subsection (d) (1) provides that the Attorney General may submit comments on a final proposed leasing program but no later than 90 days after the publication of such a program. He is to submit comments after consultation with the Federal Trade Commission.

No independent cause of action is created by this provision. Therefore, the failure of the Attorney General to submit a report, or the insufficiency of the reasons given for his views and recommendations, are not to be an independent basis for a law suit.

The conferees do not intend to abridge existing authority of any agency or department, including the Federal Trade Commission, to solicit information or give comments.

#### *CZMA*

Both versions provide for regulations as to coastal zone management applicability. The House amendment provides for regulations involving "consideration" of a program "being developed or administered" pursuant to section 305 or 306, respectively, of the Coastal Zone Act. The Senate bill provides for "coordination" of the program with the management program being developed and also for "consistency" to the extent practicable with the management program. The conference report is the same as the House amendment. The Secretary is to establish procedures by regulation for consideration of State coastal zone management programs.

#### *Data*

Both versions provide for the obtaining by the Secretary of Interior of relevant data. The House amendment specifically provides that classified data is to remain confidential for such a period of time as agreed to by the head of a department or agency from whom the information is requested. The Senate bill contains no such comparable language. The conference report is the same as the House amendment. In addition, the House amendment provides for the confidentiality of "all privileged data." The Senate bill provides for the confidentiality of all "proprietary" data. The conference report refers to both "privileged or proprietary data."

This subsection deals with the authority and responsibility of the Secretary of the Interior to collect data and keep it confidential. This subsection does not affect the independent authority of the Secretary of Energy and the Federal Energy Regulatory Commission, under the

DOE Act, and other statutes, including section 11 of the Energy Supply and Environmental Coordination Act of 1974, to collect, obtain, classify, and release information.

Both versions provide for the forwarding of nonprivileged information by other Federal departments and agencies. The House amendment provides that such agencies are to provide the Secretary with "nonprivileged information." The Senate bill provides for the forwarding of any "nonproprietary information." The House amendment also authorizes other Federal departments and agencies to provide the Secretary with privileged information. The Senate bill does not specifically provide such an authorization. Furthermore, the House amendment provides that such privileged information given to the Secretary is to remain confidential for such period of time as agreed to by the department or agency. The conference report with minor technical changes follows the House amendment, authorizing other Federal departments and agencies to provide the Secretary with privileged information, which is to remain confidential for the agreed period of time.

This subsection deals with the authority and responsibility of the Secretary of Interior to collect data and keep it confidential. The subsection does not affect the independent authority of the Secretary of Energy and the FERC, under other statutes, to collect, obtain, and lease information.

#### *Revisions*

Both the Senate bill and House amendment authorize revision and reapproval of a leasing program. Minor revisions need not go through the detailed procedures. Significant revisions—affecting the substance of a program—must go through the same procedures established for the original development of the program.

#### *Section 19—Coordination and consultation with affected States and governments*

This section is intended to insure that Governors of affected States, and local government executives within such States, have a leading role in OCS decisions and particularly as to potential lease sales and development and production plans. In addition, it is intended to provide a mechanism for involvement of Governors and local government officials.

The House amendment titles section 19 "Coordination and Consultation with Affected States and Local Governments." The Senate bill titles section 19 as "Coordination with Affected States and Local Governments." The conference report is the same as the House amendment.

Both versions allow, but do not require, Governors of affected States to submit recommendations regarding the size, timing, or location of a proposed lease sale or with respect to a proposed development and production plan. The House amendment, in addition, allows the submission of recommendations by "the executive of any affected local government in such State." The conference report follows the House amendment, providing for the submission of recommendations by the heads of local government units to the Secretary, after those recommendations have been forwarded to the Governor.

The House amendment provides for the submission of recommendations within 90 days after receipt of a development and production plan. The Senate bill provides for submission of recommendations within 60 days of the receipt of a development and production plan. The conference report is the same as the Senate bill—60 days.

Both versions provide procedures for the acceptance by the Secretary of Interior of the recommendations of Governors. In addition, the House amendment provides procedures for the acceptance of the recommendations of the executive of any local government units. In the conference report, the submission of recommendations to the Secretary and the acceptance of recommendations by the Secretary is made discretionary as to executives of local governments, and only allowable after the submission of the recommendations to the Governors.

Both versions and the conference report require acceptance of a Governor's recommendation if the Secretary of the Interior determines that the recommendations provide a reasonable balance between the national interest and the well-being of citizens of the affected State.

The Secretary shall communicate the reasons for accepting or rejecting the recommendations of the Governors in writing to them.

The Conferees intend that local governments are generally to act through their State government representatives; and that data and recommendations are to be forwarded to and by local governments through State Governments. In addition, there is to be no independent basis for legal action by a local government unit against activities under this act, or actions pursuant to this act, because of an alleged failure to consult with, submit data to, or receive the recommendations of a local government.

Both versions provide for cooperative agreements by the Secretary of Interior with affected States for the sharing of information and other purposes, making it explicit that such cooperative agreements are to be consistent with the confidentiality, waiver of immunity, and liability responsibilities of section 26 (see discussion, on Section 26). The House amendment specifically provides that the sharing of information should be "(in accordance with the provisions of section 26 of this act)." The Senate bill contains no such specific limitation. On this point the conference report is the same as the House amendment.

#### *Section 20—Environmental studies*

Section 20 provides a mechanism by which information concerning the environment in an area leased or to be leased and then developed is to be analyzed and then used as a basis to monitor effects.

The House amendment titles this section "Environmental Studies." The Senate bill titles this "Baseline and Monitoring Studies." The conference report is the same as the House amendment.

The House amendment provides for studies to establish "information needed for the assessment and management of environmental impacts on" the environment. The Senate bill provides for studies in order to establish "baseline information concerning the status of" the environment. The Senate receded and the conference report is the same as the House amendment.

Both versions provide for required studies within certain limits of time for new leases and existing leases. The House amendment pro-

vides for a study to be commenced not later than 6 months after enactment with respect to any area or region where a lease sale has been held "or announced by publication of a notice of a proposed lease sale." The Senate bill does not refer to the announcement by publication of a notice of a proposed sale in regard to the initiation of such studies. The conference report adopts the House language.

The House amendment provides the commencement for a study 6 months prior to a lease sale for areas where no lease sale has been held "or scheduled." The Senate bill does not make reference to lease sales scheduled. The Senate recedes and the conference report is the same as the House amendment.

The House amendment refers to "environmental information" in predictive studies. The Senate bill refers to "baseline information" as part of the predictive studies. The Senate receded and the conference report is the same as the House amendment.

The House amendment provides that the Secretary is to consider relevant environmental information in making appropriate decisions and developing regulations and conditions. The Senate bill contains no comparable provision. The Senate receded and the conference report is the same as the House amendment.

Both versions provide for utilization of the Department of Commerce to the maximum extent practicable. The House amendment provides that the "Secretary shall, to the maximum extent practicable, enter" into appropriate arrangements. The Senate bill provides that "the Secretary is authorized and directed, to the maximum extent practicable, to enter" into appropriate arrangements. The Senate receded and the conference report is the same as the House amendment.

#### *Section 21—Safety regulations*

Section 21 establishes procedures for study, review, coordination, and if necessary, revision of safety regulations in light of the policy of the 1978 amendments for safe operations on the Outer Continental Shelf.

Both versions provide in subsection 21(a) for a study of existing safety regulations by the Department of the Interior and the Coast Guard, in consultation with other appropriate Federal officials, but use different language. In addition, the Senate bill mandates participation by the Secretary of Labor in the study, while the House amendment allows such participation as Labor would be a Federal department or agency to be consulted, when appropriate. The conference report follows the House amendment and does not explicitly list the Secretary of Labor.

It is expected that in undertaking this study, the Secretary of the Interior and the Secretary of the Department in which the Coast Guard is operating will consult with the Department of Labor, and specifically the Occupational Safety and Health Administration, and other agencies having expertise in the areas of safety and health, oil and gas development and production, and environmental protection.

In addition, the conference report provides, as a conforming and technical change to include "health" regulations in the study. Since the President is required under both versions and the conference report to submit, after receipt of this study, a plan to Congress of his

proposals to promote safety and health, it is both appropriate and necessary that the study include "health" considerations as well.

The House amendment requires use of best available and safest "technologies", as described, for all new drilling and production operations and wherever practicable on existing operations. The Senate bill similarly provides for use of the best available and safest "technology". The conference report is the same as the House amendment, in order to emphasize that more than one technology may be applicable as the best way to achieve a particular objective or do a particular job.

In addition, the House amendment provides for such technology which the Secretary determines to be economically "feasible". The Senate bill provides for use of such technology which the Secretary determines to be economically "achievable". The conference report is the same as the House provision.

There are structural differences between the House and Senate versions as to use of technology. Both versions provide for use of such new technology or technologies on existing operations "wherever practicable". Both versions also provide for a determination by the Secretary as to the incremental benefits against the incremental costs, but use slightly different language to do so. The conference report is the same as the House amendment. It is, of course, the responsibility of an operator on an existing operation to demonstrate why application of a new technology would not be "practicable".

The conferees expect, to assure uniformity of requirements for industry compliance, that a determination as to what are the best available and safest technologies economically feasible is to be made by the regulating agency on an industry-wide basis or with respect to classes or categories of operations, rather than on an installation-by-installation, company-by-company, or lessee-by-lessee basis. In addition, the language provides for economical feasibility to be a balance of costs against benefits.

Best available and safest technologies (BAST) is required when "significant" effects are involved and can only be then waived when incremental benefits "are clearly insufficient" to justify increased costs. Ordinarily, again to assure uniformity of requirements, considerations of costs and benefits should also be done by the regulating agency on an industry-wide basis or with respect to classes or categories of operations, rather than on a company-by-company, installation-by-installation, or lessee-by-lessee basis. Responsibilities for safety are presently shared by Interior, Coast Guard, and other agencies. It is expected that the appropriate agency will make this cost/benefit analysis in exercising their respective responsibilities.

It is expected that in promulgating regulations and in administering the program, the Secretary and the Department in which the Coast Guard is operating will consult and cooperate with OSHA and other federal agencies having expertise in the areas of safety and health, oil and gas production, and the environment.

The House amendment provides in section 21(c) for the Coast Guard to promulgate regulations or standards as to diving activities and other unregulated hazardous working conditions. The Senate bill provides for the coast Guard, working with the Secretary of Labor, to promulgate the regulations for diving standards. The Senate bill

provides that, notwithstanding the Occupational Safety and Health Act, both Labor and Coast Guard are to promulgate and enforce these regulations jointly and in a coordinated manner. The House amendment has no such language. The conference report follows the House intent and requires regulations as to unregulated hazardous working conditions in the OCS only by the Coast Guard. As regulations and standards on diving activities have already been proposed by the Coast Guard, they are no longer specifically enumerated. Regulations on workers' safety shall be promulgated, and can be modified, by the Secretary of the Department in which the Coast Guard is operating.

Both versions provide that existing authority of agencies is not to be affected by this section, although the Senate provides that the existing authority of the Secretary of Labor is to be expanded to cover diving practices in all circumstances. The conference report deletes this reference and specifies that the existing authority under law of the Secretary of Labor, (as to occupational safety and health), the Administrator of the Environmental Protection Agency (as to protection of the environment) and of the Secretary of Transportation (as to pipeline safety) is not affected by this act.

In adopting the language providing for OCS workers' safety regulations to be promulgated by the Coast Guard, and also providing for the existing authority of the Secretary of Labor (through the Occupational Safety and Health Administration) as to workers' safety to be retained, the Conferees clearly intend neither to reduce, nor to add to existing OSHA authority, under section 466(1) of the Occupational Safety and Health Act.

This section merely requires the Coast Guard to undertake expedited action where it deems it necessary to regulate hazards currently unregulated by the Government. Under its existing authority, and section 4(b) (1) of the Occupational Safety and Health Act, the Coast Guard may take any appropriate action necessary to regulate any hazard, and may over time displace the applicability of OSHA standards to other working conditions through exercise of appropriate rulemaking actions. However, the conferees intend that consultation with OSHA in standards development and administration, and opportunity for participation by interested parties in any such Coast Guard action, will assure that employees receive no less protection than under existing standards. Consistent goals contained in recent OSHA-Coast Guard agreements—maximizing the safety and health protection of employees, avoiding duplication of effort, and avoiding undue burden on the maritime industry—are also endorsed by the conferees.

The Senate bill provides for the Secretary of Commerce, working with the Coast Guard and the National Institute of Occupational Safety and Health, to conduct studies of underwater diving techniques and equipment. The House amendment contains no comparable provision. The House receded and the conference report adopts the Senate provision for such a study.

The House amendment provides specifically that the Secretary of the Interior is to consult and coordinate with appropriate agencies to avoid inconsistent or duplicative requirements. The Senate bill contains no comparable provision. The conference report follows the House amendment.

The House amendment provides that the Secretary is to make available a compilation of safety and other regulations applicable to OCS activities by any and all Federal departments or agencies. The Senate bill contains no comparable provision. The conference report follows the House amendment.

#### *Section 22—Enforcement*

This section is to provide mechanisms and procedures for the enforcement of safety and environmental regulations issued pursuant to the provisions of the act. Failure to comply with any provision of the act, any implementing regulation, or the terms of a lease or permit included because of the act or regulations, would subject the violators to civil or criminal penalties under Section 24 of the 1978 amendments.

The Senate bill provides for the Secretary of the Interior and Secretary of Department of Coast Guard to consult with each other regarding the enforcement of regulations. The House amendment specifies that "applicable Federal officials" shall enforce regulations. The conference report adopts the Senate language but adds the Secretary of the Army.

Regulatory responsibility is delegated in other sections of the Act, as well as is the power to implement and enforce such regulations. In many circumstances, it is the responsibility of Interior, in others, Coast Guard, in others, the Army, and in others, the Department of Transportation.

Nothing in this section, or any other section in the bill is intended to affect the authority of other agencies or departments to exercise enforcement powers and impose duties under other laws. In addition, the conferees expect that, as with regulatory authority, enforcement authority be executed by applicable Federal officials in a cooperative manner with other Federal agencies having expertise in that area. Thus, for example, it is expected that in exercising his enforcement authority, the Secretary of the Department in which the Coast Guard is operating will consult and cooperate with OSHA and other Federal agencies having expertise in the areas of safety and health, oil and gas production, and environmental protection.

The House amendment provides for certain duties of a holder of a lease or a permit to maintain places of employment in accordance with safety and health standards and free from recognized hazards to employees, and to maintain operations in compliance with all other regulations. The Senate bill contains no comparable provision. The conference report follows the House amendment. Of course, this section does not relieve any contractor or subcontractor from other obligations under the law.

The House amendment provides that a lessee or permittee is to allow prompt access to any inspector and to provide such documents or records as are pertinent. The Senate bill provides authorization for the Secretary of Interior or the Coast Guard to enter without delay any part of a facility and to examine documents and records as are pertinent. The conference report follows the House amendment. Since prompt access and provision of records is a duty directly imposed by this provision, lease and permit holders should expect that inspectors will visit the site of any operation, with or without advance notice.

In addition, both versions mandate inspections. As to "surprise" inspections, the House amendment provides for such inspections with-

out advance notice at least once a year. The Senate bill has no such specific time requirement but does require periodic "surprise" inspections. The conference report follows the Senate bill.

Both versions provide in this section for investigations and reports on fires and major oil spills. The Senate bill defines major spillage in terms of "any discharge from a single source". The House amendment defines it in terms of "spillage in one instance". The conference report follows the House amendment.

In addition, the House amendment provides specifically that lessees or permittees are to cooperate with the investigation. No such specific language is included in the Senate bill. The conference report follows the House amendment.

The House amendment provides for investigations and public reports on any death or serious injury as a result of operations conducted pursuant to this act. The Senate bill contains no such comparable provision. The conference report follows the House amendment.

The House amendment provides that appropriate agencies are to consider allegations from any person as to the violation of safety regulations and to answer same. The Senate bill contains no comparable provision. The conference report provides that the agency "may review" rather than "shall consider" any allegation and does not require a report on each such allegation. The conferees were aware that the Coast Guard has broad authority and responsibility for safety and health under this Act and other maritime statutes and to review allegations of safety and health regulations and violations. The language of this section is not intended in any way to restrict the Coast Guard's ability to investigate violations or allegations of violations of any safety or health regulation.

Both House and Senate provisions provide for necessary power to agencies to conduct investigations. The House amendment is more specific than the Senate bill in that it includes specific references to process in the district courts of the United States, and the power to administer oaths. The conference report follows the House amendment.

The House amendment provides that the annual report shall include a report on safety violations and investigations. The Senate bill contains no comparable provision. The conference report follows the House amendment with a technical amendment substituting "any" in lieu of "the" in reference to "investigations undertaken" to make it clear that investigations of allegations are discretionary and not mandatory.

#### *Section 23—Citizen suits, court jurisdiction, and judicial review*

Section 23 details the procedures by which citizens, including lessees, or permittees, employees, local and State governmental officials, and others, can participate in the enforcement of the act. Review of certain types of actions are through administrative proceedings, followed by an appeal in a court of appeals. Review of other actions are by suits in a district court.

Clearly included in this section are local governments and local government officials. This is in addition to the responsibilities placed on the State Governors, throughout the conference report, to consult

with affected local government officials. As noted in this statement in various places, the responsibilities placed on the Governor to consult with, supply information to, and forward the recommendations of, local government officials are not to be an independent basis for a lawsuit against the Federal Government if the Governor should not adequately comply with the responsibilities. However, this limitation is not intended to restrict any right a local government or local government official may otherwise have under this section to commence a civil action.

The House amendment terms this section "Citizen Suits, Court Jurisdiction, and Judicial Review". The Senate bill terms this section "Citizen Suits". The conference substitute follows the House amendment.

#### *Citizen suits*

There are slight structural differences between the two versions on citizen suits. Both provisions in section 23(a) permit suits against any person, including government instrumentalities and the Secretary of Interior. The House amendment does not specifically state that suits are authorized against the Secretary for nondiscretionary duties or acts. The Senate receded and the conference substitute follows the more general and inclusive language of the House amendment.

The House amendment provides for control of the citizen suits and responses to be with the Attorney General. The Senate bill provides for such control to be by the Secretary of Interior, his authorized representative, or the Attorney General. The Senate receded, and the conference substitute follows the House amendment, as Section 23(a) (2).

The House amendment limits intervention by the Federal Government to the Attorney General, upon the request of the Secretary or other appropriate Federal officials. The Senate provides for intervention by the Secretary of Interior. The conference report follows the House amendment, and provides for intervention by the Federal Government only to the Attorney General.

Both the Senate bill and House amendment and thus the conference report provide that citizen suits cannot be commenced until after a 60-day notice period or if the Federal Government has commenced and is diligently prosecuting a comparable action. This 60-day delay period, however, may be waived if a plaintiff can show an imminent threat to the public health or safety or an immediate effect on the plaintiff's legal interest. This reference to imminent threat to the "public health or safety" relates only to those circumstances justifying an immediate citizen's suit. Thus, under this section, a plaintiff can only commence a suit if he has "a valid legal interest which is or may be adversely affected." Ordinarily, he must then give notice and wait 60 days before actually commencing litigation. However, if a citizen, with the requisite standing, can also show an imminent threat to the public health or safety, or an immediate effect on his legal interest, he may commence litigation immediately after notification, without waiting the 60-day period.

#### *Exclusivity of suits*

The House amendment and Senate bill have similar provisions as to the exclusivity of the citizen suit and other judicial procedures. The

House amendment provides that all suits challenging violations of the OCS Act or implementing regulations are to be in accordance with this new section. Rights under any other act or the common law to seek appropriate relief are not barred. The Senate bill provides that no rights under any statute or common law to seek enforcement of the act or any regulations or to seek any other relief are barred by this section. The conference report adopts the House language.

#### *General jurisdiction*

The House amendment provides for jurisdiction in the district courts (restating section 4(b) of the 1953 OCS law). The Senate bill merely refers to section 4(b) of the OCS law. The conference report follows the House amendment, as subsection 23(b).

The Senate bill specifically provides that any resident who is injured in any manner may only sue in the judicial district having jurisdiction under section 4(b). The House amendment makes no specific reference to suits for injuries. The conference report follows the Senate bill with a technical change, substituting 23(b) in lieu of 4(b).

#### *Judicial review*

Both versions provide for limitations of judicial review after administrative proceedings. The House amendment provides that specific objections are to be considered "only if issues upon which such objections are based" have been previously submitted. The Senate bill provides for consideration only if "such objections have been submitted" previously. The conference report follows the broader House amendment. The Senate bill provides that citizen suits and judicial review procedures are to take precedence on the docket over other causes of action. The House amendment contains no comparable provision. The conference report adopts the Senate language.

#### *Compensation to plaintiffs—Court costs*

Both the Senate bill and House amendment provide that a court may award costs of litigation, including reasonable attorney's fees and expert witness fees, to a party when the court determines such an award as appropriate. The conference report adopts the House language, authorizing such awards in citizen suits, and in administrative proceedings, and judicial review of, a leasing program, exploration plan, or "D. & P." plan.

#### *Section 24—Remedies and penalties*

Both versions provide for appropriate remedies and penalties. The House amendment provides in subsection 24(a) for actions only "upon a request by the Secretary". The Senate bill provides for civil actions "at the request of the Secretary, the Secretary of the Army, or the Secretary of the department of which the Coast Guard is operating". The conference report follows the Senate bill.

The House amendment provides in subsection 24(a) for the institution of action by "the Attorney General". The Senate bill provides for the institution of action by the Attorney General "or United States Attorney". The conference report adopts the Senate language.

The House amendment specifically provides for civil penalties for violation of the terms of a lease, license or permit. The Senate bill con-

tains no such specific reference. The conference report employs the House language.

The House amendment provides in subsection 24(b) that only the Secretary of Interior may assess, collect and compromise penalties. The Senate bill provides that the Secretary of Interior, Secretary of the Army and the head of the Coast Guard may all collect penalties. The conference report follows the House amendment. The Secretary is, of course, bound to seek appropriate penalties, and collect them, for violations discovered and reported by other agencies, such as the Coast Guard or Army, which have enforcement responsibilities under this act. In addition, nothing is intended by this section to affect the power of the Secretary of Energy or the Federal Energy Regulatory Commission, or other agencies, to take appropriate action, under other laws, to enforce their own regulations.

The House amendment specifically provides in subsection 24(c) for criminal penalties for the violation of the terms of a lease, permit or license. The Senate bill contains no such specific reference. The conference report follows the House amendment.

#### *Section 25—Oil and gas development and production*

Section 25 is intended to provide the mechanism for review and evaluation of, and decision on, development and production in a leased area, after consultation and coordination with all affected parties.

#### *Application*

Both versions contain detailed and similar provisions describing development and production plans. The House amendment requires a development and production plan to be submitted for all future leases in a frontier area. The Senate bill provides for a development and production plan to be submitted for all future leases anywhere. The conference report requires a plan to be submitted for all future leases except in the Gulf of Mexico.

The House amendment also requires a plan to be submitted for existing leases in frontier areas, where no oil or gas has been yet discovered. The Senate bill similarly requires a plan to be submitted for existing leases where there has not yet been a discovery, but exempts the Gulf of Mexico. The conference report adopts the Senate language. Thus, the mandate and specific procedures of this bill that the Secretary of Interior must secure submission, and then review, approve, or disapprove a development and production plan applies to new leases or existing leases where there has not yet been a discovery and does not apply to leases, old or new, in the Gulf of Mexico. This does not affect the existing requirements on lessees, already established by the Secretary of Interior.

The conferees, by recommending the enactment of section 25 to the Congress, are not approving or disapproving existing requirements for development and production. It is hoped that the Secretary of Interior will apply existing law and requirements to tracts which have commenced development and production, and to other areas in the Gulf of Mexico, where development and production activities have been going on for a number of years, in such a manner as to limit bureaucratic redtape and otherwise minimize delays in the search for and production of oil and gas.

The requirements of this new section are specifically made inapplicable to the Gulf of Mexico. However, there are areas in the eastern gulf that have never been developed. While a sale—the so-called MAFLA sale—has been held for this region, no development or production has occurred there. The conferees therefore adopted a provision that gives the Secretary of the Interior the discretion to require submission of plan—in accordance with this section—for development and production activity in this area which is defined as being adjacent to the State of Florida.

The conference committee understands that lines have already been drawn to determine those areas that are adjacent to the State of Florida. [See 43 Federal Register 24711 (June 7, 1978)].

*Onshore impacts and submission and contents of plans*

Both versions provide for an accompanying onshore impact statement. The House amendment provides for the statement to include all operations for development, production, transportation, processing, or refining. The Senate bill provides for operations for development or production. The conference report follows the Senate bill.

Both versions provide for the submission of plans and statements to Secretary of Interior and then by the Secretary to outside groups. The House amendment excludes from these requirements of submission, "privileged information (as such term is defined in regulations issued by the Secretary)". The Senate bill excludes "interpretative data, which, pursuant to regulations prescribed by the Secretary, constitute confidential or privileged information." The conference report follows the House amendment.

The House amendment provides that information is to be submitted to the Governors and upon request, to the executive of any affected local government. The Senate bill provides that they are only to be "made available" to the executive of any affected local government. The conference report follows the House amendment.

It is intended that development and production plans and statements are to be provided to local government executives upon request. Furthermore, there is to be no independent basis for legal action by a local government unit against activities under this act, or actions pursuant to this act, because of an alleged failure to consult with, submit data to, or receive the recommendations of a local government.

The House amendment precludes a future lease from being issued without a requirement of compliance with the development and production plan for any lease "in any frontier area". The Senate bill provides an exception for this requirement for future leases in "the Gulf of Mexico". The conference report adopts the Senate language but in a separate section allows the Secretary to apply this provision to future leases in the Gulf of Mexico adjacent to the State of Florida (see discussion above).

Both versions provide for specific items to be included in a development and production plan. Among other things, the House amendment provides a requirement of a "description of all facilities and operations located on the Outer Continental Shelf". The Senate bill uses the words: "all offshore facilities and operations". The conference report

follows the House amendment, making it explicit that the plan itself is to only cover OCS facilities and operations, including pipelines, and not facilities and operations in State waters.

Also, both versions, and the conference report, require a plan to include "an expected rate of development and production and a time schedule for performance." The consideration and review by the Secretary of Interior of this element of a plan must be made in light of any applicable regulations by the Secretary of Energy on production rates and diligence. [See DOE Act, section 302(b) and 302(c)].

The requirements as to information to be submitted to the Secretary of Interior under the section are not intended to affect the authority of the Secretary of Energy, the Federal Energy Regulatory Commission, or any Federal department or agency, to collect, or require information under any other law.

*Consistency, approvals, modifications, disapprovals, and revisions*

The House amendment provides that no license or permit for any activity described in a development or production plan is to be granted unless there is conformity with the requirements of the Coastal Zone Management Act. The Senate bill contains no comparable provision. The conference report follows the House amendment.

Both versions provide for an environmental impact statement (EIS) at least once, but use differing words. The House amendment provides that the Secretary shall at least once "in each frontier area, declare the approval of a development and production plan or plans to be a major Federal action". The Secretary is also to evaluate the cumulative effect of activities on an area. The Senate bill provides that the Secretary shall at least once prior to approving a development and production plan in any area or region as defined by the Secretary, other than the Gulf of Mexico, declare approval to be a major Federal action. No language as to cumulative effects is included. The conference report adopts the common intent of both provisions. Except for the Gulf of Mexico area or region, the Secretary of Interior is to declare approval of a development and production plan in each defined area or region to be a "major Federal action". Thus, for each area or region, there shall be, as required by the National Environmental Policy Act (NEPA), and CEQ guidelines, preparation of a draft environmental impact statement, a hearing, and a final statement. The Secretary of Interior is given the discretion to invoke NEPA procedures after submission of a plan for the first development proposal in an area or region, or the second or third—so long as it is invoked at least once. The conferees expect that NEPA will be invoked prior to approval of a plan when major or substantial development and production activities seem to be indicated for an area or region. In preparing, drafting, and revising the EIS, the conferees expect the Secretary of Interior to consider and address the cumulative effects of past and future OCS activities in an area or region.

Both bills provide for plans to be submitted by nearby lessees, when NEPA procedures are invoked. The House amendment provides that the Secretary may require lessees of tracts "for which development and production plans have not been approved" to submit such plans. The

Senate bill provides that the Secretary "may require lessees on adjacent or nearby leases" to submit such plans. The conference report follows the House language.

The House amendment provides for specific review procedures and a 90-day review period for development and production plans where no EIS is required or prepared. The Senate bill similarly provides for such procedures, but provides for a 60-day review period. The conference report follows the House language, with the adoption of the 60-day review period as in the Senate bill.

Both versions provide for a determination by the Secretary as to approval of a development and production plan. The House amendment provides for review and decision by the Secretary within 60 days of a final EIS or submission of a plan. The Senate bill provides for determination within 60 days of release of an EIS, or 120 days after the period for comment for a plan. The conference report follows the House amendment.

Both versions provide for modifications of a plan because of environmental inadequacies. In addition, the House amendment specifically provides for modification in light of air quality regulations. The Senate bill contains no comparable language. The conference report follows the House amendment with reference to air quality regulatory requirements of the conference substitute (see discussion as to Section 5(a)(8)).

The Senate bill provides for modifications to comply with the Coastal Zone Management Act and the consistency requirements of such act. The House amendment contains no comparable language as amendments to the OCS Lands Act of 1953. The conference report follows the Senate bill with a conforming amendment to require any modification which involves activities for which a Federal license or permit is required and which affects any land use or water use in the coastal zone of a State with an approved coastal zone management program to receive concurrence by such State with respect to the consistency certification unless the Secretary of Commerce makes a certain finding.

Both versions provide for procedures for disapproval. The House amendment specifically provides for disapproval for failure to comply with air quality regulatory requirements. The Senate bill contains no specific reference to air quality. The conference report follows the House amendment with reference to the air quality regulatory requirements of the conference report. (See discussion as to section 5(a)(8).)

Both versions provide for disapproval for failure to comply with the requirements of the Coastal Zone Management Act, but use different language. The conference report follows the House amendment.

Both versions provide disapproval for environmental reasons in substantially the same language. However, there are structural differences in these provisions and the House amendment specifically includes "fish and other aquatic life" as part of "life," while the Senate bill only includes "aquatic life." The conference report follows the House amendment.

Both versions provide for cases where compensation is not to be granted for disapproval where there is a failure to comply with regulations, or requirements of the Coastal Zone Management Act, but use

different language. The conference report follows the House amendment.

Both versions provide for procedures for disapproval, followed by cancellation, and compensation, but use different wording. The Senate bill provided detailed standards for compensation if there is a cancellation after disapproval. The House amendment provides that cancellation shall not foreclose any claim for compensation as required by the Constitution or any law. The conference report follows the Senate bill, and adopts the procedures of section 5(a)(2) as to compensation. (See discussion as to section 5(a)(2)(C).)

Both versions provide for cancellation if a plan is not submitted or not complied with. The House amendment provides that such cancellation is to be in accordance with procedures described in section 5(c) and (d) of the act. The Senate bill provides that such cancellation is to occur after notice, a reasonable period for corrective action, an opportunity for a hearing, and judicial review. The conference report adopts the House language.

As described above, the machinery for approvals, modifications, disapprovals, and revision of D. & P. plans is the responsibility of the Secretary of Interior. However, any such approvals, modifications, disapprovals, and revisions must be consistent with any applicable regulations promulgated by the Secretary of Energy. (See DOE Act, sections 302 and 303.)

*Section 26—Outer Continental Shelf oil and gas information program*

Section 26 describes the procedures and requirements for obtaining and releasing information from lessees and permittees.

Both versions, provide for the submission of data by lessees or permittees. The House amendment provides that the Secretary is to have access "to all data and information (including processed, analyzed, and interpreted information)." The Senate bill provides for access to "all data obtained from such activity." The conference report follows the House amendment, adopting the common intent of both versions.

Both versions provide for payments for reproduction and reprocessing in certain circumstances. The House amendment provides for payment to a permittee of the cost of processing and reproducing data, in all cases. The Senate only provides for payments to a permittee for processing data specifically requested by the Secretary and not otherwise prepared in the normal conduct of business. The conference report follows the House provision but with an amendment to conform it to existing regulatory requirements, 30 C.F.R. 251.13. Thus under the conference report, a permittee is to be fully compensated by the Federal Government for reproduction costs. In addition, he is to be compensated for any processing or reprocessing, specifically requested by the Secretary and not otherwise prepared in the normal conduct of business. If processing has been done by the permittee in the normal conduct of his business, the Secretary must pay the costs attributable to processing or reprocessing of data and information at the "lowest rate available to any purchaser for processing such data and information."

Both versions provide for the submission to affected States of summaries of data designed to assist them in planning for onshore impacts. In addition, the House amendment provides for the submission

of such summaries "to any requesting affected local government." The Senate bill contains no such reference. The conference report follows the House provision but amends it to read: "and upon request, to any affected local government." The language was slightly altered to emphasize that summaries of such data are only to go to local government units when specifically requested. It is intended that local governments are generally to act through their State government representatives. There is to be no independent basis for legal action by a local government unit against activities under this act, or actions pursuant to this act, because of a dispute regarding any alleged failure to consult with, submit data to, or receive the recommendations of a local government.

Both versions provide for the transmittal of certain information, for example, reports and statements to affected States. The Senate bill provides that no information is to identify any particular tract with a name of a party, so as to compromise competitive position. The House amendment contains no comparable language. The conference report follows the Senate bill and makes a technical change. To reduce the volume of information that would otherwise be forwarded to a possibly overwhelmed government, the Secretary is to submit an index of all documents and then if a request is made, submit any document or documents requested.

The House amendment provides that if an employee of the Federal Government or of a State reveals privileged information, the lessee or permittee may commence a civil action for damages against the United States or a State. The House amendment also provides that the State or Federal government cannot claim immunity because such employee was outside of his scope of employment. The Senate bill contains no comparable provision. The conference report follows the House amendment.

The conferees adopted this provision, and the restrictions on release of information, to protect proprietary information, and not to discourage access by qualified officials.

The Senate provides that if the Secretary makes a determination that drilling is necessary for more accurate information, then the Secretary can contract for such drilling. Specific budgetary procedures are outlined for funding such drilling, and the annual report is to include the cost of a drilling program, staffing, and a description of such program. The House amendment contains no comparable provision. The Senate receded on the provisions and they are not included in the conference report.

The procedures and requirements of the OCS oil and gas information provision described in section 26 relate to the authority and responsibilities of the Secretary of Interior. Nothing in this section affects the authority of the Secretary of Energy, Federal Energy Regulatory Commission, or any other Federal department or agency, to obtain, collect, assess, classify, and release information when authorized or required under any other law including section 11 of the Energy Supply and Environmental Coordination Act of 1974.

The House amendment contains a provision relating to release of information obtained by the Federal Government "in the conduct of

geological or geophysical explorations by any Federal agency pursuant to section 11 of this act."

The conference report, as a conforming change to section 11 of this report (see discussion on sec. 11(a), *supra*), deletes this reference.

*Section 27—Federal purchase and disposition of oil and gas*

S. 9 provides many new bidding options, involving royalty and net profit shares. Section 27 provides the procedures for the securing of royalty and net profit share oil and gas and, in addition, gives the United States the right to purchase oil and gas and to distribute it.

The Senate bill provides for collection of royalty on net profit of oil and gas, and the purchase of oil and gas from a "lease or permit" and the House amendment only refers to "lease." The conference report follows the House language.

The conferees note the passage of the Department of Energy Organization Act, 91 stat. 565, and intend that the collection of royalty or net profit shares in kind and purchase of oil and gas by the Secretary of Interior is to be in conformity with applicable regulations promulgated by the Secretary of Energy, DOE Act, section 302 (b) (5).

Both versions and the conference report allow title to any oil or gas to be transferred to certain requesting Federal agencies and departments. Such transfers are to be in accordance with any applicable regulations of affected agencies and departments.

As a conforming change, the conference report specifies that the allocation, offering, distribution, and sale of such oil are to be in compliance with any applicable regulations promulgated by the Secretary of Energy.

Both versions provide that the authority of the Secretary of Interior to sell oil is limited by any provision of law in effect, or regulation implementing such law, providing for mandatory allocation and pricing.

Both versions and the conference report provide that if oil or gas is offered for sale and no acceptable bids are received, and if the oil or gas is not otherwise transferred, the lessee is to take any such oil or gas and pay the regulated price, if applicable, or fair market value. The determination as to whether a bid is acceptable is to be made jointly by the Secretary of Interior and the Federal Energy Regulatory Commission as to gas.

Both versions provide for allocation of royalty oil to small refiners.

The House amendment provides that any oil sold or allocated to small refiners under this section is to be credited against that amount allocated under section 8 of the act, which deals with the 20-percent set-aside for small and independent refineries. The Senate bill contains no such limitation. The House receded and the crediting provision is not included in the conference report.

The House amendment defines "small refiner" in accordance with the Small Business Administration standards. The Senate bill defines "small refiner" specifically, as one who qualifies as a small business concern under the rules of the SBA and who cannot purchase in the open market an adequate supply of oil to meet his needs. The conference report follows the House amendment with the addition of the

phrase "in effect as of the date of enactment of this section or as thereafter revised or amended." Thus, a small refiner, for purposes of section 27, is one so defined by the Small Business Administration standards, now or in the future.

*Section 28—Limitation of exports*

The findings, purposes, and policies of S. 9 make it clear that the development of the Outer Continental Shelf is to be one method to reduce dependence on foreign energy sources and increase the domestic supply of oil and natural gas. Section 28 limits exports of any OCS oil and gas. Exports are to be allowed only in cases of exchange agreements, efficiency, or the national interest, and then only when such exports do not add to dependency on foreign energy sources and when the President makes a specific finding to this effect. The President must submit his findings and recommendations to Congress as to the export of any oil or gas for approval or disapproval. If the Congress, within 60 days, passes a concurrent resolution of disapproval stating that such export would not be in the national interest, further exports are to cease.

Both versions provide for limitations on exports of domestic oil and gas. The House amendment provides that before there is such an export, the President has to make a finding that such exports "will not increase the number of barrels of oil or cubic feet of gas imported into this country." The Senate bill provides that the President's finding is only to be that "such exports will not increase reliance on imported oil and/or gas." The conference substitute adopts the Senate language.

The House amendment provides in subsection 28(d) for an exemption to the limitation for oil or gas "which is exchanged or exported pursuant to an existing international agreement." The Senate bill contains no comparable language. The conference report adopts the House language.

*Section 29—Restrictions on employment*

Both versions provide for restrictions on employment of employees of the Department of Interior who have had duties or responsibilities under the act. The Senate bill provides an absolute ban of employment related to previous work for 2 years after termination of employment. The House amendment provides more specific standards as to which kind of activity is or is not permitted after termination of employment. For example, it provides that former high-ranking Interior Department employees may not represent a party other than the United States for a period of 2 years after leaving the Interior Department, if that representation relates to a matter that was within his official responsibility. It also prohibits any effort by a former high-ranking employee to influence the Interior Department on any matter for a period of 1 year after leaving the Department. The conference report follows the House amendment.

*Section 30—Documentation, registry, and manning requirements*

The House amendment contains a section detailing certain requirements for OCS facilities and vessels. Specifically, the provision pro-

vides for regulations (1) to generally require manning or crewing by U.S. citizens or permanent resident aliens; (2) to require documentation under the law of the United States; and (3) to require certain minimum standards of design, construction, alterations, and repair. The Senate bill contains no such section.

The conferees adopted a substitute section intended to insure safe operations on all OCS facilities and vessels, and to reconcile the dual concerns of providing the fullest possible employment for Americans in U.S. Outer Continental Shelf activities and eliminating to the fullest possible extent the likelihood of retaliation by foreign nations against American workers in foreign offshore activities.

### *Safety*

The House amendment provides that within 6 months after enactment of the 1978 OCS Amendments, the Coast Guard is to promulgate regulations requiring any vehicle or structure used for OCS activities authorized by this act to comply with such minimum standards of design, construction, alteration, and repair as the Coast Guard is to require. The Senate bill contains no such provision.

The Conference report adopts the House provision with two changes. First, the conference report provides that standards can be established by the Coast Guard or the Secretary of Interior. This conforms this section to the rest of the OCS Act. Coast Guard and Interior generally share safety and other regulatory responsibilities (see discussion in this statement of managers on secs. 21 and 22). Second, a new subparagraph (b) is inserted into this section to provide that the requirement of application and enforcement of such standards is not to be applied retroactively to any vehicle or structure. Thus, such standards are not required for any vehicle or structure built prior to the enactment of the 1978 OCS Amendments—until such time as they are rebuilt. If such vehicles or structures are rebuilt—then such new standards are to be applied. Of course, as detailed in this statement of managers in its discussion on section 5(a) and sections 21 and 22, nothing in this limitation is meant to supersede the general regulatory and enforcement authority of the Secretary of Interior or the Coast Guard, granted elsewhere in the OCS Act. It only limits the mandate of new standards and enforcement of such standards and does not limit the general regulatory discretionary authority.

### *Documentation*

The House amendment requires the Coast Guard, within 6 months of enactment of the 1978 OCS Amendments, to promulgate regulations, applicable 1 year after the effective date of the regulations, requiring "any vessel, rig, platform or other vehicle or structure" used for OCS activities, and built or rebuilt after the applicable date "when required to be documented, be documented under the laws of the United States." The Senate bill contains no such provision. The conference report adopts the House provision with a clarifying amendment. Such regulations are to apply to vessels "required to be documented by the laws of the United States." Thus, this provision re-

affirms existing interpretations and applications of mandatory documentation under U.S. laws.<sup>1</sup>

### *Manning and crewing*

The House amendment requires the Secretary of the Department in which the Coast Guard is operating to promulgate regulations within 6 months of enactment of the 1978 amendments which require, with certain exceptions, that vessels or other vehicles or structures used for OCS activities be manned or crewed by U.S. citizens or permanent resident aliens.

The Senate bill contains no such provision. The conference report adopts a substitute for this provision providing for exceptions in certain cases and limitations in others.

The conference report thus provides, as does the House version, that the Coast Guard is to promulgate regulations that vessels or other vehicles or structures be manned by U.S. citizens or permanent resident aliens. "Permanent resident aliens" are those lawfully admitted to the United States, in accordance with the Immigration and Naturalization Act of 1952, as amended, section 101(a)(20), 8 U.S.C. 1101(a)(20).

The conference report also adopts the three limitations or exceptions included within the House version, to avoid any disruption in OCS activities by this manning requirement. First, the requirement does not apply where "specific contractual requirements or national registry requirements in effect at the time of the promulgation of the regulation" provide for foreign personnel. This waives the requirement of this section requiring exclusive use of American citizens or resident aliens when an existing contract already covers operations. In this case, immediately upon the expiration of the contract, the American crew requirement would come into effect.

This also omits from the citizenship or permanent residence requirements those members of the crew of foreign-flag vehicles or structures that come under the manning requirements established under certification of registry of other nations, generally only the marine crew. Any such foreign manning laws enacted after the passage of this law would not be applicable.

Second, section 30 would not apply if "there are not a sufficient number of such citizens or aliens who are qualified and available for work." This is virtually the present standard of the immigration law. Special circumstances may exist which prevent all operators from complying

<sup>1</sup> Under existing law, only vessels can be documented and only vessels of 5 net tons or more which are engaged in commerce are "required to be documented." Platforms are never documented. No fixed rigs (platforms) are required to be documented because they are not engaged in commerce. Thus, under present law, vessels operating between points in the United States are embraced within coastwise laws. Under consistent federal government application, vessels operating between the coast of the United States or any point within the United States, its territorial waters, and its territories and possessions—and fixed OCS platforms or mobile rigs secured to or submerged onto the OCS for drilling—have been required to be documented under the laws of the United States. Of course, vessels engaged in traffic between platform and platform, secured rig and secured rig, a platform and secured rig are also included. Vessels which can be documented include ships, semisubmersible, submersible or jack-up drill rigs and drill ships, whether propelled or self-propelled. Thus, this provision does not change this existing law. There has been some question raised as to whether vessels, not departing from a point within the United States, or its territories or possessions, and delivering items to a vessel in the offshore waters—but not carrying merchandise or passengers from one point in U.S. waters or on the OCS to another—are required to be documented. By present opinion of the Treasury Department, they are not. In any event, if they are not "required to be documented," they are not covered by this provision. If they at some future time are required, they would be so under this section—but also be so under present law.

within the prescribed time and thus the substitute provision has, in those instances, made allowance for the temporary employment of foreign nationals until qualified U.S. citizens or resident aliens are available.

The provision as to use of citizens and permanent resident aliens applies only to "manning" or "crewing." Thus, specialists, professionals, or other technically trained personnel called in to handle emergencies or other temporary operations would not be included.

Third, this requirement is prospective only. It only applies to vessels, vehicles or structures used one year after enactment of the regulations and thus no later than 18 months after enactment of the 1978 amendments.

The conference report adds two more exceptions or limitations. The fourth exception is that the manning or crewing provision could be waived if the President makes a specific finding, as to a particular vehicle or structure, that application of this requirement would be adverse to the national interest. Thus, if national security or defense would be affected, for example, the President could waive this provision. However, such waiver can only be after a specific finding and only on a vehicle-by-vehicle, structure-by-structure basis.

Finally, as a fifth exception or limitation, the conference report does not automatically apply the domestic manning and crewing provision to foreign offshore vehicles or structures. The conferees sought to establish appropriate response to foreign "hire national" statutes, policies or practices which discriminate against Americans working overseas or to otherwise damage international relations.

Under the conference report the manning or crewing requirement does not apply to foreign offshore vehicles or structures until the President makes certain findings in relation to the foreign country in which the vehicle or structure was built. If the President finds that a foreign nation, directly or indirectly, by statute, regulations, policy or practice, has adopted a national manning requirement for equipment in its offshore waters, he may apply this manning or crewing provision.

The conferees were explicit as to the scope of this application to foreign nations. A vehicle or structure of a foreign nation is defined as one over 50 percent owned by citizens of a foreign nation, or under the effective right of such citizens to effectively control such vehicles or structure. If not 50 percent so owned, or so controlled, it is not a "vehicle or structure of a foreign nation" and this limitation does not apply. The general requirement of domestic manning or crewing would apply, with the four exceptions outlined earlier.

Next a finding is required that a foreign nation has acted to provide for domestic manning. The actions are to be those of the government of the foreign nation—whether by its national government or a political subdivision. The actions may be direct—by statute or regulations—or indirect—by lease, license, permit or contract terms. The conferees expect the President to utilize these mechanisms and to make a continuing review of existing and future statutes, rules, policies, and practices and to apply this provision in appropriate circumstances. The conferees expect that Congress will actively exercise its oversight responsibilities to assure that this provision is utilized in appropriate circumstances.

If such a finding is made, the President is to determine to what extent and to what degree it is being applied and to respond in kind, that is in proportion. Thus, if only a political subdivision has domestic manning, our regulations would apply to the citizens of the political subdivision and not to those of the whole country. Or, if a foreign nation has two-thirds manning requirement for certain structures, regulations implementing the President's determination would similarly apply to similar structures and be limited to a two-thirds requirement. Or if a foreign country requires its citizens to be used for certain types of work and not for others, this section would be applied to those workers and not generally. Of course, a general broad-based foreign government domestic manning requirement would allow a similar application here.

### TITLE III—OFFSHORE OIL POLLUTION FUND

Title III provides the procedures to be followed in the event of an oilspill and compensation for cleanup costs and damages resulting from such a spill. The title applies to spills from any offshore facility in the OCS, and any oil tanker, barge or other watercraft which is operating in offshore waters, and which is carrying oil directly from an offshore facility.

Both the Senate bill and House amendment have comprehensive oilspill liability titles (title III of both versions). The conferees are aware that a comprehensive oilspill bill has passed the House of Representatives and has been approved by the Senate Commerce and Transportation Committee, and that a similar bill is now pending in the Senate Environment and Public Works Committee. Such bills apply to all oilspills into the marine environment, including those resulting from OCS-related activities.

The conferees do not in any way intend, by adoption of this title, to affect consideration of, or approval of, any language in a comprehensive oilspill act. It is hoped and expected that such a comprehensive bill will soon be enacted and thus obviate the need for this title. The conferees expect that his title would be abrogated by passage and enactment of such a comprehensive bill.

Moreover, certain decisions were made by the conferees as to language in sections of this title. By this action, the conferees do not intend in any way to bind themselves, their committees, or the Senate and House as to appropriate language for a comprehensive oilspill bill.

To fully explain the action of the conferees, this statement of managers will discuss this title section by section, and describe resolution of substantive differences in the two versions.

#### *Section 301—Definitions*

This section defines 25 terms which appear in the oilspill liability title.

Both the Senate and House amendment contain either identical or very similar language for seven terms. Certain technical and conforming changes were made and language expressing the desires and intents of both Houses were included in the conference report for these terms: "Secretary", "fund", "person", "damages", "person-in-charge", "offshore facility", and "discharge".

The House amendment contains several terms not defined in the Senate bill or defined differently than in the Senate bill. The Senate receded and the following terms, as defined in the House amendment, are included in the conference report as follows:

In the definition of "incident", the House amendment relates to occurrences involving one or more offshore facilities or vessels, or any combination thereof. The Senate bill does not include the phrase, "any combination thereof." The conference report follows the House amendment.

The House amendment includes a definition of "public vessel" which is a subclass of vessel that performs governmental functions for Federal, State or local units of government. In the House amendment, public vessels are exempted from later liability provisions and the victims of oil pollution caused by such vessels must seek relief from the fund. Government owned or operated vessels which are engaged in commercial activities are not included in the definition. The Senate bill contains no comparable definition. The conference report adopts the House amendment.

The House amendment includes a definition of "facility" which means a structure, or group of structures (other than a vessel or vessels), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil. The Senate bill contains no comparable definition. The conference report adopts the House amendment.

The House amendment includes a detailed definition of "oil pollution" to include discharged oil in the contiguous zone, on the high seas when discharged in connection with OCS activities, or on or near a foreign country entitled to reciprocal rights under this title. The Senate bill contains no comparable definition. The conference report adopts the House language with an amendment. "Oil pollution" is to include spills from vessels transporting OCS oil whenever the vessels are in offshore waters and to include effects on offshore waters and the adjacent shore.

The House amendment includes separate definitions of "United States claimant" and "foreign claimants." In each case, a claimant includes individual residents, and government agencies. The Senate bill has no comparable provisions. The conference report follows the House amendment.

The House amendment includes definitions of "United States" and "State" which mean all of the States, territories and possessions of the United States. The Senate bill has no comparable provision. The conference report follows the House amendment.

The House amendment includes a definition of "oil" which means petroleum including crude oil or any fraction or residue thereof. The Senate bill contains no comparable provision. The conference report follows the House amendment.

The House amendment defines "cleanup costs" to mean the cost of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from that incident. The Senate bill more specifically defines "cleanup costs" to include all reasonable and actual costs incurred in removing or attempting to remove oil discharged or in attempting to prevent, reduce or mitigate damages from such a discharge. The conference report follows the House amendment.

The House amendment includes a definition of "claim" which means a demand in writing for a sum certain. The Senate bill contains no comparable provision. The conference report follows the House amendment.

Both versions have similar definition of "owner" except that the House amendment specifically includes the holding of a title as proof of ownership and specifically excludes any person who holds indicia of ownership primarily to protect his security interest. The conference report is the same as the House amendment.

Both versions have similar definitions of "operator" except that the House amendment specifically excludes owners of either a vessel or an offshore facility, (as already included in the definition of "owner") and specifically includes, with respect to any vessel, any person responsible for the manning, victualing and supplying of the vessel. The conference report is the same as the House amendment.

The House amendment includes a definition of "property" which means littoral, riparian, or marine property. The Senate bill contains no comparable provision. The conference report is the same as the House amendment.

The House amendment includes a definition of "guarantor" which means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator. The Senate bill contains no comparable provision. The conference report is the same as the House amendment.

The House amendment includes a definition of "gross ton" which means a unit of 100 cubic feet for the purpose of measuring the total unit capacity of a vessel. The Senate bill contains no comparable provision. The conference report is the same as the House amendment.

The House amendment includes a definition of "barrel" which means 42 United States gallons at 60° Fahrenheit. The Senate bill contains no comparable provision. The conference report is the same as the House amendment.

The Senate bill includes a definition of "revolving account" which means the account referred to in section 302(b) of that bill. The House amendment contains no comparable provision. The Senate receded to the House and the conference report does not contain this definition.

The conferees also agreed to the following:

The House amendment includes a definition of "ship" which means either of the following types of vessels carrying oil as bulk in cargo: 1) a self-propelled vessel, or 2) a non-self-propelled vessel which is certificated to operate outside the internal waters of the United States. The Senate bill contains no comparable definition. The House receded to the Senate and the conferees deleted this definition. This provision is no longer appropriate or relevant to, or used in, title III of the conference report.

The Senate bill includes within the scope of the oilspill title, a "vessel" transporting OCS oil, whether in the waters above the OCS or in the navigable waters. The House amendment is limited to the waters above the OCS. The conference report provides for the scope to be for vessels operating in all "offshore waters", that is in the waters above the OCS and above the submerged lands.

The House amendment includes a definition of "removal costs" which means (1) costs incurred under section 5 of the Intervention of

the High Seas Act; and (2) other cleanup costs. The Senate bill contains no comparable provision. The conference report follows the House amendment, with an amendment. It specifically defines removal costs to include costs incurred under subsection (c), (d) or (l) of section 311 of the Federal Water Pollution Control Act. This enables the Government to recover from the Fund any removal costs authorized by the recently amended Federal Water Pollution Control Act for OCS-related spills.

*Section 302—Fund establishment, administration, and financing*

Both versions call for the establishment of funds which are to be maintained at a level of not less than \$100 million and not more than \$200 million. The House amendment allows the limitation to be exceeded when necessary to permit moneys recovered or collected on behalf of the fund, to be paid into the Fund. In the House amendment, the fund is created within the Treasury of the United States, while the Senate bill establishes the fund within the Department of Transportation and establishes also a revolving account, without fiscal year limitation, within the Treasury. In the House amendment, the fund is called the "Offshore Oil Pollution Compensation Fund." In the Senate bill, the fund is called the "Offshore Oil Production Compensation Fund." On all these minor differences, the conferees accepted the language of the House amendment.

The Senate bill establishes a revolving account in the Treasury of the United States that would be available to the fund to carry out the provisions of the title. There is no comparable House provision. The Senate receded to the House and the conference report does not contain this paragraph.

Both versions, in slightly different words, provide that the fund shall consist of money generated by a 3-percent barrel tax on oil obtained from the Outer Continental Shelf, and money obtained by the fund through fines, penalties and efforts to obtain reimbursement. The conference report follows the House amendment.

Both versions authorize the Secretary to promulgate regulations to modify the fee for the purposes of maintaining a proper amount in the fund. The House amendment specifically requires that such regulations not become effective until at least 90 days following their publication in the Federal Register. The conference report follows the House amendment.

The House amendment alone provides that no such fee regulation, whether or not actually in effect, may be stayed by any court pending completion of judicial review of that regulation or modification. The conference report adopts this provision. The House amendment provides further that no modified fees paid by any owner pending completion of judicial review of the modified fee regulation shall be repaid to such owner. The Senate bill contains no comparable language. The House receded to the Senate and the conference report does not contain this language.

The House amendment alone includes a provision making any person who fails to pay fees required under this title liable for a civil penalty and liable for all fees due plus the interest. Also under the House amendment, the Attorney General is authorized, at the request of the Secretary of the Treasury, to bring an action for fee amounts due and

penalties in the name of the fund. The Senate bill has no such provision. The conference report is the same as the House amendment.

Both versions contain a provision which would make the fund immediately available for removal costs. The House amendment also specifically authorizes the Secretary to promulgate regulations designating the person or persons who may obligate available money for this purpose. The conference report adopts the House language and also adds provisions authorizing immediate availability of funds for claims settlement and other administrative and personnel costs. This allows the Government to charge all necessary costs of administering the fund to the fund itself. In addition, the conference report makes it clear that any payments are subject to such amounts as provided in appropriations acts.

The House amendment includes a provision making criminal the falsification of any required record or document. The Senate bill contains no comparable provision. The conference report is the same as the House amendment.

In different language, both versions authorize regulations for requiring certain records and documents and access to such records. The House amendment provides for such regulations to be promulgated by the Secretary of the Treasury. The Senate bill provides for promulgation by the Secretary of Transportation. In addition, the House amendment provides access to the Secretary of the Treasury and the Comptroller General. The Senate bill provides for access to the Comptroller General and the Secretary of Transportation. Finally, the House amendment specifically provides that the Secretary of Transportation is to determine the level of funding. The Senate bill contains no such specific authorization. The conference report adopts the House language for these requirements on regulations for records and documents and access to them.

Both versions, in differing language, allow money not immediately needed by the fund to be invested in interest bearing special obligations of the United States. The House amendment states that such investments shall be made by the Secretary of the Treasury, while the Senate bill states that they shall be made by the Secretary of Transportation with the approval of the Secretary of the Treasury. The House amendment also states that the special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The House provides that any interest on, and the proceeds from the sale of, any obligations held in the fund shall be credited to and form a part of the fund. The Senate bill contains no such specific provisions. The conference report is the same as the House amendment on interest accounts.

Both versions have similar provisions authorizing the fund to borrow from the Treasury when necessary. However, the Senate bill provides that such borrowing shall not be in excess of \$500 million, while the House amendment contains no stated ceiling. The House amendment states specifically that notes and obligations shall be redeemed by the Secretary from moneys in the Fund. The conference report is the same as the House amendment on authority to borrow, no limit on amounts that can be borrowed and redeemed.

*Section 303—Damages and claimants*

Both the Senate bill and House amendment list a variety of potential damages from oil pollution, for which compensation may be sought from the fund.

The House amendment specifically states that claims are to be asserted for "economic loss", arising out of, or directly resulting from, oil pollution for certain enumerated items. The Senate bill contains no such specific language but only enumerates items to be considered as damages. The conference report adopts the House language. While both versions generally include the same basic items within the scope of allowable damages, there are some differences.

The House amendment specifically includes removal costs as a basis for a claim under this provision. The Senate bill does not. The conference report adopts the House language.

The House amendment limits a claim for removal costs in that the owner or operator of a vessel or offshore facility involved in an incident may assert such a claim for removal costs only if he can show that he is entitled under another provision of the title to a defense to liability. The Senate bill does not include any of this specific language. The conference report adopts the House language.

The House amendment includes as a basis for a claim loss of use of real or personal property, if the property involved is owned or leased, or the natural resource involved is utilized by the claimant. The Senate bill does not specifically enumerate this basis—but does provide for damage for the cost of repairing or replacing, income lost during repairs or replacement, and loss of value. The conference report adopts the House language.

The House amendment includes injury to, or destruction of, natural resources. The claim can be made by the President as trustee for natural resources over which the U.S. Government has sovereign rights or exercises exclusive management authority; or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State. Compensation is to be used only for the restoration of the damaged natural resources or for acquisition of equivalent resources. The Senate bill simply allows recovery for any costs or expenses incurred by the Federal or any State government in the restoration, repair, or replacement of natural resources damaged by an oil discharge. The conference report adopts the House language with an amendment which specifically provides sums recovered for injury to natural resources to be available to restore, rehabilitate, or acquire the equivalent of the resource and which specifically provides that the measure of damages is not limited to sums to restore or replace.

In addition, it is intended that reasonable costs associated with the preparation and presentation of natural resource damage claims are intended to be recoverable as part of each claim.

The House amendment includes as a basis for a claim loss of use of natural resources if the resource involved is used by the claimant. The Senate bill contains no specific provision on this basis of a claim. The House amendment allows a claim for loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources, if the claimant derives 25 percent

or more of his earnings from activities which utilize the property or natural resource. The Senate bill contains a similar provision, except that the period of loss of income or impairment of earning capacity for which a claim may be asserted must not exceed 5 years. On these two provisions, the conference report adopts the House language.

The House amendment includes as a basis for a claim, loss of tax revenue for a period of one year due to injury to real or personal property by any State or political subdivision thereof. The Senate bill contains a similar provision except that recovery may also be sought by the Federal Government. The conference substitute incorporates the House language but includes as a basis for a claim loss of tax revenue by the Federal Government.

Except for removal costs, the House amendment allows recovery by a foreign claimant to the same extent that a U.S. claimant may assert a claim. Such recovery is based on reciprocal rights and duties. The foreign claim is allowed for oil pollution in the navigable waters or in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident; if the foreign claimant is not otherwise compensated for his loss, and recovery is authorized by a treaty or executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants. The Senate bill contains a similar provision stating that no person shall be liable under the title to a foreign claimant unless a reciprocal condition similar to that in the House amendment is present. The conference report follows the House amendment with an amendment making the intent of both Houses clear that the foreign government can not be recompensed for tax losses. A claim for tax losses from a foreign government may present an awkward case for administrative adjudication.

Both versions have similar provisions authorizing the Attorney General to bring class action suits. The Senate bill specifically provides that sums recovered in such suits be distributed to the members of the class except for reasonable costs which shall be deposited in the U.S. Treasury. The House amendment contains no such specific language. The Senate receded to the House and the conferees adopted the House provision.

Both versions have similar provision allowing any member of a group to bring a class action suit in the absence of action by the Attorney General. In the House amendment, such suits are allowed after 60 days have elapsed from the date on which the Secretary designates the source of the oil discharge, while in the Senate bill such suits are allowed 90 days after a prohibited discharge has occurred. The conference report is the same as the House amendment.

The Senate bill has a provision which states that if the number of members of a class exceeds 1,000, publishing notice of the action in the Federal Register and in local newspapers serving the areas in which the damaged parties reside shall be deemed to fulfill the requirement for public notice established by rule 23(c)(2) of the Federal Rules of Civil Procedure. The House amendment has no similar provision. The Senate receded to the House conference report does not contain this provision.

### *Section 304—Liability*

Subject to certain exemptions in each case, both versions with different language hold the owner and operator of a vessel or an offshore facility strictly liable, jointly and severally, for the damages spelled out in the respective bills. The House amendment refers only to the owner and operator of a vessel other than a public vessel. The Senate bill has no such specific limitation for vessels. The conference report is the same as the House amendment.

Both versions place limits on liability except in certain similar circumstances involving gross negligence or violations of applicable safety standards. The House amendment provides that such violations are of applicable safety, construction, or operating standards or regulations of the Federal Government; and must be within the privity or knowledge of the owner or operator. The Senate bill neither has this privity requirement nor does it limit regulations to those of the Federal Government. In addition, the House amendment does not limit liability when the owner or operator fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities. The Senate bill has no such specific language. The conference report follows the House amendment on exceptions to limits of liability.

Both versions limit liability for the owner and operator of a vessel. In the House amendment, the limitation is \$250,000 or \$300 per gross ton, up to a maximum of \$30 million, whichever is greater; in the Senate bill, the limitation is \$150 per gross registered ton, with no maximum. The conference report provides for a limitation of \$250,000 or \$300 per gross ton, whichever is greater, thus striking the maximum.

Both versions limit liability for the owner and operator of an offshore facility of removal costs and an amount up to \$35 million. The conference report specifically provides for limitation of "the total of removal and cleanup costs and an amount limited to \$35 million for all damages."

Both versions provide certain defenses to liability. The House amendment provides that owners and operators shall not be liable where the incident was caused primarily by an act of war, civil war, or insurrection. The Senate bill would impose no liability to the extent that the owner or operator establishes that the discharge of oil or that any damages resulting from such discharge were caused by an act of war. The conference report precludes liability when the incident is caused solely by an act of war, hostilities, civil war, or insurrection.

The House amendment states that no liability shall exist where the incident is caused primarily by a natural phenomenon of an exceptional, inevitable or irresistible character. The Senate bill does not include this natural phenomenon exception. The conference report precludes liability where the incident is caused solely by "an unanticipated grave national disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character", which could not have been prevented by "due care or foresight".

The House amendment provides a defense to liability to the extent that the incident was caused by the negligence of a third party or the claimant. The Senate bill provides a defense only if the incident was totally caused by the negligence or intentional act of a third party, or

the damaged party. The conference report adopts the Senate intent and provides a defense if the "incident is caused solely by the negligence or intentional act of the damaged party or any third party (including any government entity)."

When such intentional or negligent acts are involved, the Senate bill provides that the damaged party or third party involved shall, if also an offshore facility or vessel, be liable for such cleanup costs of damages to the same extent as if such discharge had occurred from their facility or vessel. The House amendment has no comparable language. The conference report deletes this provision.

The Senate bill provides that all removal costs incurred by a government agency are not subject to defense or limitations. The House amendment contains similar language as to facilities, but is not specific as to vessels. The House recedes and the Senate intent is included in a new subsection.

The House amendment requires that the Secretary, from time to time, shall report to Congress on the desirability of adjusting the monetary limitations on liability for the owners and operators of offshore facilities and vessels. The Senate bill contains no such provision, but requires the President to adjust the financial responsibility and liability requirements in accordance with the wholesale price index. The conference report adopts the House provision.

Subject to certain exceptions in both versions, both the Senate bill and the House amendment provide that the Fund shall be liable for damages not actually compensated and for which a claim may be asserted under the provisions of each respective title.

The House amendment provides that except for removal costs, the fund is not liable where the incident is caused primarily by an act of war, hostilities, civil war or insurrection, and, as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by negligent or willful misconduct of that claimant, or as to a particular claimant to the extent such damages or costs were caused by the negligent or intentional actions of the damaged party.

The Senate bill provides that the fund shall not be liable for cleanup costs and damages to the extent that the discharge was caused by war, negligence of the Federal Government, or negligent or intentional acts of a damaged party. The conference report bars liability of the fund for gross negligence or willful misconduct, in whole or in part, of a claimant and to the extent it is caused by the plain negligence of a claimant. Acts of war can be a basis for a claim against the fund.

Both versions provide that owners and operators shall also be liable for the interest on claims from the time the claim is presented until the time it is paid. The Senate bill alone specifically states that this interest payment shall not be subject to the limitation on liability provisions. The House amendment excludes from the period during which the interest is accruing the time, if any, from the date upon which the owner or operator offers to the claimant a settlement equal to or greater than that ultimately paid to settle the claim, to the date on which the claim shall be settled. No such language is in the Senate bill. In addition, the House amendment provides that if the owner, operator or guarantor shall offer the claimant, within 60 days of the date

upon which the claim was presented or advertised which ever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, he shall be liable for interest only from the date the offer was accepted by the claimant to the date upon which payment is received by the claimant. The Senate bill contains no comparable language. The conference report is the same as the House language on these interest provisions.

In the House amendment, it is stated that no indemnification, or similar agreement shall be effective to transfer the liability, other than as specified in the title. The Senate bill contains no comparable provision. The House receded and the conference report does not include this provision. The conferees were concerned that inclusion of this provision of the House amendment might radically change existing practice in regards to certain vehicles owned and operated by service contractors, who are too small to bear liability risks and for whom insurance coverage is not readily available. Non-inclusion of this provision will insure continued involvement of these companies and thus not decrease competition on the OCS.

Both versions, using different language, have similar provisions protecting the rights of owners or operators to sue parties who may have been responsible for a discharge of oil. The conference report adopts the House language amendment.

The House amendment provides that the provision of its section on liability shall supersede all such other provisions of law. The Senate bill has no comparable provision. The conference report is the same as the House provision.

#### *Section 305—Financial responsibility*

Both versions have similar provisions requiring the owners and operators of vessels to file certificates of financial responsibility.

In the House amendment, such filing shall be in accordance with regulations issued by the President, while the Senate bill requires the regulations to be issued by the Federal Maritime Commission.

Only the Senate bill exempts vessels of under 300 gross registered tons. Only the House amendment requires bonds to be issued by an authorized U.S. bonding company.

Both versions spell out acceptable methods of proving financial responsibility but the Senate bill adds, "other evidence \* \* \* acceptable to the President".

On all these matters, the conference report follows the House amendment.

The House amendment has a provision requiring the Secretary of the Treasury to refuse required customs clearance to any vessel, subject to this section, which does not have a valid certificate of financial responsibility. The Senate bill has no comparable provision. The conference report adopts an alternative provision providing for regulations for denial of entry and detention of any vessel that does not produce the required certification.

The House amendment allows the Secretary to issue regulations granting himself access to all offshore facilities and vessels and requiring that he be shown upon request certifications of financial responsibility. The Senate bill has no comparable provision. The conference report follows the House amendment.

Both versions have provisions requiring the owner and operator of an offshore facility to obtain certificates of financial responsibility. The House amendment does not include in this requirement any facility not used to drill for, produce or process, oil, and which does not have the capacity to transport, store, transfer, or otherwise handle more than 1,000 barrels at any one time. The conference report contains the House language with a technical amendment making it clear that the subsection refers to "offshore facilities".

The House amendment provides that the evidence of financial responsibility shall be sufficient to satisfy the limits of liability which has been established, or \$35 million, whichever is less. The Senate bill provides that such proof shall be based on the capacity of the offshore facility and other relevant factors. The Senate bill spells out a list of acceptable methods for demonstrating financial responsibility, while the House amendment simply states that such demonstration must be in accordance with regulations promulgated by the Secretary. With an amendment changing "regulations promulgated by the Secretary", to "regulations promulgated by the President" the conference report follows the House amendment.

Both versions provide that claims may be brought directly against the guarantor providing evidence of financial responsibility. The House amendment and not the Senate bill also states that the guarantor shall be entitled to invoke all rights and defenses which would be available to the owner and operator, and that he shall be entitled to invoke the defense that the incident was caused by the willful misconduct of the owner and operator, but he shall not be entitled to invoke in proceedings brought by the owner or operator against him. The conference report follows the House amendment.

The House amendment provides for a study by the President of the marine insurance industry. The study shall attempt to determine whether adequate insurance is available for the owners and operators subject to this Title to meet their obligations and whether the market is sufficiently competitive to assure purchasers of a reasonable range of insurance services. The study shall be completed within one year, with an interim report due in three months. The Senate bill has no comparable provision. The conference report includes onshore facilities in this provision. The intent of this change is to avoid a duplicative study of insurance if one is required by a future comprehensive oil-spill bill.

#### *Section 306—Notification, designation, and advertisement*

Both versions have similar provisions requiring owners and operators to notify the Secretary of oil pollution incidents from their vessels or facilities.

Both versions require the Secretary to notify owners and operators in cases where an oil pollution discharge from their vessel or facility is suspected. The House amendment requires that this be done upon designation by the Secretary that a particular facility was the source of a discharge. The Senate bill requires that it be done when the Secretary learns that a discharge is alleged to have occurred from a facility. Under both, the owner and operator are given 5 days to respond to the allegation. The House amendment also requires the Secretary to notify

the guarantor of the financial responsibility certificate of the facility or vessel involved.

In both versions, advertisement procedures are spelled out for cases where the owner or operator involved fails to deny the allegation or designation that the discharge came from his vessel or facility. These procedures are similar, except that in the Senate bill, the Secretary is required to publish the advertisement, in modified form if necessary, in the Federal Register.

Both versions outline procedures for advertising in cases where no owner or operator accepts, or fails to deny, that a discharge occurred from his vessel or facility. These procedures are similar except that in the House amendment they also apply specifically to cases where the source of a discharge was a public vessel, or when the Secretary is unable to designate a source.

Only the Senate bill requires that the Secretary continue to advertise after the initial advertisement period, at a rate not less frequently than once each calendar quarter for a total period of 5 years. The conference report incorporates the House language for this entire section.

The two versions have similar provisions spelling out those instances in which claims may be presented to the fund for settlement, except that the House amendment provides in addition for such presentation where the Secretary has advertised or otherwise notified claimants—cases where the spill emanated from an unknown source or a public vessel.

The House amendment alone provides that in cases where a claimant attempts unsuccessfully to reach an agreement with the owner and operator or guarantor, he may elect to commence an action in court against the owner, operator or guarantor, or to present the claim to the fund; that election to be irrevocable and exclusive.

The House amendment alone also specifically provides that claims for uncompensated damages may be presented to the fund in cases where the claim exceeds the liability limit of the owner and operator, or where the owner and operator and the guarantor are financially incapable of meeting their full obligations.

Both versions require that any person presented with a claim under this title shall, at the request of the claimant, transmit certain documents to the Secretary and the fund. In the Senate bill, such person is required to transmit such documents within 2 days of the request, and the claim in such cases shall be deemed to have been presented to the fund.

Both versions have similar provisions spelling out procedures for instances where a dispute arises between a claimant and the fund. The House amendment allows a claimant to submit the dispute to the Secretary sixty days after its initial presentation to the fund, while the Senate bill requires a wait of 90 days. The House amendment also allows claimants to elect to commence an action in court against the fund in lieu of submitting the dispute to the Secretary for decision; that election to be irrevocable and exclusive.

Both versions require, with different wording, the Secretary to promulgate regulations establishing procedures for the settlement of claims against the fund.

Both versions have similar provisions spelling out the private and governmental sources which the Secretary shall use to assist in adjusting and adjudicating claims. The House amendment alone includes State agencies among those who may be used to assist in processing claims against the fund. In such cases, the House amendment provides that no payment may be made on a claim asserted on or in behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the Secretary. The House amendment also specifically allows the Secretary to review and audit all claim payments.

In cases where a claimant is unable to reach a satisfactory settlement with the fund and thereafter presents his claims to the Secretary for review, the House amendment gives the Secretary the option of delegating the review to a three person panel. The House amendment sets out the general qualifications of the panel members. The Senate bill contains no comparable provisions.

Both versions allow the Secretary to refer disputes to an official appointed under section 3105 of title V, United States Code. The House amendment refers to the appointment of an administrative law judge; the Senate bill refers to the appointment of a hearing examiner.

The House amendment provides that the administrative law judge be a resident of the United States judicial circuit within which the damage complained of occurred. The Senate bill has no comparable provision.

Both versions have similar provisions spelling out the procedures for consideration of a dispute, except that, the House amendment states specifically that subpoenas shall be issued in accordance with procedures in subsection (d) of section 555 of title 5, U.S.C., and rules promulgated by the Secretary. In addition, the House amendment allows the Secretary to invoke the aid of the local U.S. District Court in enforcing its power of subpoena.

The two versions have similar provisions spelling out the proper location for hearings and disputes.

The House amendment allows the Secretary to review decisions of the administrative law judge if he so chooses.

The Senate bill, however, would prohibit the Secretary from reviewing decisions reached by the hearing examiner.

Both versions have similar judicial review provisions, except that the Senate bill specifies review in the district court in the nearest circuit in which the damage occurred or if the U.S. Court of Appeals for the District of Columbia, in the U.S. Court of Appeals for the District of Columbia.

The House amendment provides that in cases brought in court, both plaintiffs and defendants are required to provide the fund with copies of complaints and pleadings, that the fund may intervene as a matter of right and may be dismissed from an action, upon its own motion, when either the owner, operator or guarantor admits liability.

Under the House amendment, receipt of notice by the fund shall give res adjudicata effect to any judgment, even though the fund chooses not to become a party.

Under the House amendment, the sanction imposed on plaintiffs or defendants for failure to give notice to the fund is a loss of limitation of liability to which the defendant would otherwise be entitled

and the loss of any plaintiff's right to recovery from the fund for amounts not paid by the defendant.

The House amendment has a provision allowing the plaintiff to join the owner, operator, or guarantor in an action brought against the fund, and giving the fund the right to implead any other person who might be liable under the title, pursuant to rule 14 of the Federal Rules of Civil Procedure. The Senate has no comparable provision.

Both bills have similar provisions providing for time limits on the filing of claims, except that the House amendment allows three years from the date of discovery of economic loss or six years from the date of the incident resulting in the loss, whichever is earlier and the Senate bill allows only one year from the date of discovery of the damages of five years from the date that advertising was commenced, whichever is earlier.

The Senate bill provides that each person's damage claims arising from one incident which are presented to the Secretary shall be stated in one form, which may be amended to include new claims as they are discovered. Damages which are known or reasonably should be known, and which are not included at the time compensation is made, shall be deemed waived. The House amendment has no comparable provision. With certain technical changes, the conferees adopted the House language for this entire section.

#### *Section 308—Subrogation*

Both versions provide that any person or government entity, including the fund, who makes payment to a claimant under this title, acquires by subrogation the rights of that claimant to recover costs or damages covered by such payment.

The House amendment provides that it would be the Attorney General who would be the party bringing action on behalf of the fund against any liable party; the Senate bill allows the Secretary the option of appointing other attorneys.

Both versions have similar provisions spelling out what the fund shall recover in claims against the owner and operator, or the guarantor or a vessel or facility involved in an incident, except that the House amendment requires computation of interest pursuant to a stated formula, while the Senate bill requires it to be computed at the existing commercial interest rate. The House amendment includes in those administrative and other costs which are to be recovered, those costs incurred by the claimant or claimants against the fund.

The House amendment separates potential defendants into two classes for the purpose of differentiating their respective rights to dispute claim settlements. If the fund proceeds against owners, operators and guarantors who either deny designation or who deny liability, such parties cannot contest the amount involved, except to the extent that it exceeds their limit of liability. If, however, such parties accepted the designation and attempted to negotiate with the claimant, the defendant has a right to contest any amount paid in excess of the largest amount offered in settlement to the claimant by the defendant. The Senate bill does not make this separation.

The House amendment has a provision requiring the Secretary to pay claimants the amounts which the fund recovers equal to the costs incurred by the claimants against the fund, plus interest, except that

the fund shall not be liable for interest for the period from the date upon which the fund offered to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant accepts the offer. The Senate bill has no comparable provision. With certain technical amendments, the conference report incorporates the House language for this entire section:

*Section 309—Jurisdiction and venue*

Both versions have similar provisions setting out jurisdiction and venue. The Senate bill, however, specifically states that in cases where the damages involved occurred outside of any district, venue may lie in the nearest district. The House amendment assumed that proper jurisdictional lines would be drawn and that this provision was not necessary. The conference report contains the House language for this section.

*Section 310—Relationship to other law*

The House amendment states that the damages listed in this title can only be recovered in Federal court under this title. The Senate bill does not contain a comparable provision, and it specifies that nothing in the title shall be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil resulting in damages or cleanup costs within the jurisdiction of any State.

The House amendment does say, however, that its preemption language should not be interpreted to preclude any State from imposing a tax or fee upon any person or upon oil in order to finance the purchase and pre-positioning of oil pollution and cleanup equipment.

The Senate bill makes clear that no person may recover for the same damages under both this title and under other state or federal law.

Both versions specifically relieve owners and operators from any responsibility to establish evidence of financial responsibility for oil pollution in excess of the requirements of the respective titles.

The House amendment states that nothing in its preemption language shall prohibit an action by the fund, under any other provision of law, to recover compensation paid pursuant to this title.

On this section, the House receded and with certain technical changes, the conference report adopts the Senate language on this section. Thus, the conference report does not preempt liability or preclude a State from imposing additional requirements or liability for any discharge resulting in damages or cleanup costs within a State's jurisdiction. Double recovery by a claimant is barred, however, and no State can require evidence of financial responsibility if such evidence is maintained in accordance with this title. As noted in the introduction to the discussion of this title, the conferees do not in any way intend, by adoption of this title, to affect consideration of, or approval of, any language in a comprehensive oil spill act. It is hoped and expected that such a comprehensive bill will soon be enacted and thus obviate the need for this title.

Specifically, by adopting the Senate language on "nonpreemption", the conferees do not in any way intend to bind the House or Senate in its final determination as to whether or not State laws, or how State laws, are to be affected by enactment of a comprehensive oil spill statute.

### *Section 311—Prohibition*

The conference report is the same as the House amendment and the Senate bill.

### *Section 312—Penalties*

Both versions would assess penalties for failure to comply with regulations requiring the acquisition of proof of financial responsibility. In the House amendment, the maximum civil penalty is \$10,000; in the Senate bill it is \$25,000.

The House amendment includes additional language stating that the authority to assess and compromise the penalties involved is conferred upon the President or his designee in connection with the establishment and maintenance of evidence of financial responsibility for vessels, and upon the Secretary in connection with such requirements as to facilities, as well as to violations involving denials or detention orders issued to vessels.

Both versions have similar provisions establishing penalties for failure to notify, except that the Senate bill specifically prohibits conviction under both this title and the Federal Water Pollution Control Act, for the same failure. The conference report follows the House amendment for this entire section.

### *Section 313—Authorization of appropriations*

Both versions have identical authorization of appropriations sections, except that in the Senate bill, the authorization begins in fiscal year 1978 1 year earlier than the House amendment.

Also the Senate bill authorizes such sums as may be necessary to reimburse the fund for cleanup costs paid as a result of spills caused by negligence or the intentional act of any federal agency or instrumentality.

The conference report contains the House language for this entire section.

### *Section 314—Annual report*

Both versions call for the submission by the Secretary of an annual report. The House amendment states that the report shall be submitted to the "Congress", while the Senate bill specifies the Speaker of the House and the President of the Senate. The Senate bill alone requires that the report include a summary of the management and enforcement activities of the fund.

The conference report follows the House amendment language for this entire section.

### *Section 315—Effective dates*

The House amendment contains a provision which states that the subsection requiring a study of available insurance and all other provisions of the title authorizing the delegation of authority or the promulgation of regulations shall be effective on the date of enactment of the act, and that all other provisions and applicable regulations would become effective 180 days after the date of enactment. The Senate bill contains no comparable provision. With certain conforming changes, the conference report is the same as the House amendment.

*Other provisions*

The House amendment contains a provision stating that if any provision is found invalid, the remainder of the act shall not be affected. This provision is deleted in the conference report as assumed to be the situation without specific language.

The Senate bill contains a provision requiring the President to act to remove or arrange for the removal of oil spilled in violation of the title, unless he determines that such removal will be done properly and quickly by the owner and operator of the vessel or facility involved. Such action is to be conducted, to the greatest extent possible, in accordance with the regulations issued under the Federal Water Pollution Control Act for the removal of oil and hazardous substances. The House amendment contains no comparable provision.

The Senate bill has a separate section enumerating the duties and powers of the Secretary. The House amendment has no comparable provision, but include the powers and duties under separate sections where appropriate.

The Senate bill contains a provision requiring that copies of communications transmitted between Federal officials and any persons concerning liability and damages under this title be available for public inspection and copying. The House amendment contains no similar provision.

The latter three provisions of the Senate bill are deleted in the conference report.

## TITLE IV—FISHERMAN'S CONTINGENCY FUND

The House amendment included a "Fishermen's Gear Compensation Fund" as a section of an amended OCS Lands Act. The Senate bill included a "Fishermen's Contingency Fund" as a separate title to the 1978 Amendments, not directly amending the OCS act. The conference report contains the Senate structure and caption.

This title is intended to provide a formal mechanism for compensation to fishermen for damages to fishing vessels, gear, and other consequential damages stemming from activities related to the development of oil and gas resources on the OCS.

*Section 401—Definitions*

Section 401 of the conference report adds definitions for seven new terms.

The Senate bill contains a definition of "citizen of the United States" which includes all citizens, all States and groups of States and their agencies, and all businesses organized under the laws of any State, if such businesses are clearly owned and controlled by at least 75 percent by U.S. citizens and if their president or chairman of the board is a U.S. citizen. The House amendment contains no comparable provision.

The conferees recognize the need to define who is eligible for compensation for damages suffered and for loss of income resulting from certain offshore oil exploration, production and development activities. Accordingly, the conference report follows the Senate bill by including this provision.

The House amendment defines a "commercial fisherman" as one who is a citizen of the United States and who owns, operates or derives in-

come from being employed on a commercial fishing vessel. The Senate bill contains no such definition. The conference report is the same as the House provision.

The House amendment defines "commercial fishing vessel" to mean any vessel primarily used for the handling or harvesting of living marine resources for commercial purposes. The Senate bill has no comparable provision. The conference report follows the House amendment with an amendment defining "commercial fishing vessel" to mean any vessel, boat, ship or craft primarily used for the handling or harvesting of living marine resources for commercial purposes, including fish-harvesting related vessels. It specifies that all "commercial fishing vessels" be U.S. documented except those under five net tons which may be registered under the laws of any State. The conferees indicated that the total package of vessels that deal with the catching and harvesting of marine resources should be included. The conferees recognize that any limit to the scope of the fund might cause litigation, confusion and a loss of benefits to fishermen, and thus adopted this more inclusive definition.

The conference report defines "fish" to mean any of numerous cold-blooded aquatic vertebrates having fins, gills and a streamlined body. It includes mollusks, the shell-bearing invertebrates, such as clams, and crustaceans, the aquatic arthropods, such as lobsters. All other forms of marine animal and plant life are included in this definition except for marine mammals, birds, and highly migratory fish species, e.g. tuna. The Senate bill and the House amendment did not define the term "fish". The conferees included this definition to avoid any confusion and loss of benefits to the fishermen.

The House amendment in 401(5) defines "fishing gear" to include (A) any commercial fishing vessel, and (B) any equipment, whether or not attached to such a vessel, which is used in the handling or harvesting of living marine resources for commercial purposes. The Senate bill contains no comparable provision. The conference report follows the House amendment with the deletion of the reference to "the handling or harvesting of living marine resources for commercial purposes", which is covered by the definition of "commercial fishing vessel."

Neither version included a definition per se of "fund." However, one was included in the conference report for the sake of clarity. "Fund" means the fishermen's contingency fund established under this title.

The Senate bill defines the term "Secretary" to mean the Secretary of Commerce. The House amendment contains no comparable provision. The conference report contains the Senate definition of the term "Secretary" but expands it to include the designee of the Secretary. The conferees expect that the Administrator of the National Oceanic and Atmospheric Administration (NOAA) will be responsible for administering the fishermen's Funds.

The Senate bill alone defines "commercial fishing" as meaning all aspects of the commercial harvesting and handling of living marine resources. The House amendment contains no such provision. The conference report deletes this provision as unnecessary since a definition for "commercial fishing vessel" is included.

*Section 402—Establishment of the fishermen's contingency fund fee collection*

Both the House amendment and the Senate bill require the establishment of a fund to be available for compensating fishermen for damages suffered to their vessels and equipment, and for loss of income, resulting from certain offshore oil exploration, production and development activities. The conference report follows the House amendment with certain technical changes.

The House amendment establishes the fund directly within the Treasury of the United States, while the Senate bill establishes the fund within the Department of Commerce. The conference report follows the House amendment. Both the Senate and House establish a revolving account within the Treasury. The conference report includes this provision.

The House amendment limits amounts in the fund to \$600,000, while the Senate requires the collection of fees at least until the fund attains a level of \$2 million and requires that the fund be maintained thereafter at between \$2 million and \$5 million. The conference report limits the fund to \$1 million.

The Senate bill and the House amendment have similar provisions allowing the fund to sue, and providing for the deposit of certain sums into the fund. The conference report is the same as the House amendment.

The House amendment authorizes the Secretary to establish and maintain separate area accounts within the fund for the purpose of providing compensation for certain damages to fishermen within each area of the Outer Continental Shelf. The Senate bill has no comparable provision.

Area accounts in the House amendment would be financed by assessments made by the Secretary on OCS leaseholders and pipeline permittees in each affected area. These assessments would be limited to a maximum of \$5,000 per lessee or permittee in any calendar year. The accounts, in turn, would be maintained at a level not to exceed \$100,000 and, if depleted, would be replenished by equal assessments by the Secretary of the lessees and permittees in the area. The Senate bill contains no comparable provision, relating to special area accounts. The conference report follows the House amendment with some technical changes. A reference is included for a holder of "easement, or right-of-way," to make certain they may be assessed an appropriate amount. In addition, the Secretary of the Interior and not the Secretary of Commerce is to collect the assessments and deposit them in the appropriate account within the fund. As just mentioned the conferees intend that the Secretary of Commerce assess any holder of a "exploration" permit, or of an "easement" or "right-of-way" for the construction of a pipeline in an appropriate amount up to \$5,000 and not just the holder of a "permit" as specified by the House amendment.

The conference report also includes within the purposes of area accounts, compensation for "loss of" fishing gear and not just damages, as provided in the House amendment. This change was made to clarify that compensation may be paid for loss of gear, as well as damage.

The House amendment provides that each area account shall be established and maintained at a level not to exceed \$100,000, and to be replenished, if necessary, by equal assessments by the Secretary on each holder and each pipeline permit holder in such area. The Senate bill contains no such provision. The conference report follows the House provision with an amendment providing, discussed earlier for replenishing accounts by "appropriate" not necessarily "equal" assessments, of holders of easements and rights-of-way.

Both the Senate bill and the House amendment provide for the disbursement of money from the respective funds. The House amendment would allow disbursements from the area accounts, subject to such amounts as are provided in appropriations acts, while the Senate bill would allow disbursements from the fund. The conference report follows the House amendment, allowing disbursements from the area accounts in amounts provided by appropriations acts.

Both the bill and the amendment allow disbursement for administrative or personnel expenses of the fund or area account, except that the House amendment limits such disbursements to 15 percent of the total amount deposited in the revolving account during the fiscal year. The conference report is the same as the House provision.

Both the Senate bill and the House amendment, using different language, allow disbursements for the payment of claims under this section or title.

The conference substitute is the same as the House provision.

The House amendment would allow disbursements for the payment of reasonable attorneys' fees awarded pursuant to the claims settlement provisions of the section. The Senate bill contains no comparable provision. The conference report is the same as the House amendment.

The House amendment requires that any exploration plan, and any development and production plan, approved by the Secretary, as well as any permit issued for the construction of a pipeline in an area of the Outer Continental Shelf, contain a provision that the lessee or permittee shall agree to pay amounts specified by the Secretary, up to a maximum of \$5,000 per year in order to establish and maintain a fishermen's gear compensation fund for such area. The Senate bill contains no comparable provision. As the "funds" are now included as a separate title and not as part of the OCS Act, and as independent authority is given for assessments, the conferees believed this provision unnecessary. Thus, the conference report follows the Senate bill and contains no such provision.

#### *Section 403—Duties and powers*

Both the House amendment and the Senate bill have a provision spelling out the general powers and duties of the Secretary. These provisions are similar with respect to the Secretary's power to prescribe regulations for the settlement of claims. With regard to prescribing such regulations, the conference report adopts the common language of both versions and in addition adopts the Senate language requiring, and not merely authorizing, such regulations.

Both versions contain similar provisions with respect to the classification of potential hazards to commercial fishing, except that the House amendment specifies hazards caused by Outer Continental Shelf oil and gas exploration, production and development activities rather

than referring simply to Outer Continental Shelf activities. The conference report follows the House amendment with a technical amendment providing that such hazards are to be "identified" and not "established".

Both versions are similar with respect to regulating the stamping of materials, except that the House amendment specifically requires such stamping or labelling, wherever practicable. The conference report follows the House amendment, with an amendment specifying that it is the Secretary of the Interior that is required to establish the regulations for identifying all OCS materials, and that such materials when necessary for purposes of identification, should be "color-coded".

The Senate bill also contains provisions requiring the Secretary generally to administer and maintain the fund, in accordance with the provisions of the title, and to perform such other functions as are necessary to carry out these provisions. The House amendment does not contain similar language. The conference report follows the House amendment and contains no such provisions, since the Secretary is already empowered with all such necessary incidental authority.

#### *Recoverable damages*

Both the Senate bill and the House amendment contain provisions spelling out the types of damages which fishermen may be entitled to recover. The House amendment would allow payments to be disbursed by the Secretary from the appropriate area account to compensate commercial fishermen for actual and consequential damages, including loss of profits, due to the damage of fishing gear. The Senate bill would allow recovery for "damages and loss to profit" to commercial fishing vessels and gear for the replacement value of any loss of all or part of a commercial fishing vessel, the replacement value of any loss of all or part of gear used, and the loss of revenue to a commercial fishing vessel and crew due to OCS activities; such loss to be based on the averaged daily revenue over the previous year. The conference report follows the House amendment with the addition of a phrase allowing payments, whether or not such damage occurred in such area. This change was included to avoid administrative and other problems when the exact location of the occurrence which led to damage is unknown or disputed or when the damage occurs somewhere along the supply route between the oil drilling equipment in the OCS and the shore.

Section 403(c) (1) authorizes the payment to fishermen of damages, for damages to or loss of fishing gear, and includes loss of profits. Section 403(a) (1) requires the Secretary of Commerce to promulgate appropriate regulations to handle claims and awards. The conferees intend that appropriate regulations should determine what "profits" are to include. Such "profits" should be limited to the actual loss of the fishermen and thus should ordinarily be limited to the net profits lost.

The House amendment includes a list of circumstances under which payments cannot be made to fishermen. These include circumstances under which the damages were caused by objects of known ownership; payments which are in excess of \$75,000 per incident; payments to the extent that damages were caused by the negligence or fault of the claimant; cases where the damage involved was sustained prior to the enactment date of the act; payments which are in excess of the depreciated value of the damaged fishing gear; payments for loss of profits for

a period in excess of six months unless such a claim is supported by specified records; and payments for damages which have already been or which will be compensated for by insurance. The Senate bill contains no comparable list.

The report follows the House amendment except for two changes. First, the ceiling of \$75,000 per incident is deleted. Second, the House amendment limiting recovery to the depreciated value of the fishing gear was amended by limiting recovery instead to the replacement value. This sets a limit and not a floor. The Secretary of Commerce is authorized to disburse payments for "actual and consequential damages." Determinations of amounts to be paid, first by the hearing examiner and then pursuant to judicial review are similarly to be limited to "actual and consequential damages." Thus, in evaluating payments on a claim, the replacement cost is to be the maximum allowable—but may not necessarily be the actual amount paid. The actual amount is to be determined case by case—on the basis of the "actual and consequential" damages standard.

This section limits payments to fishermen in cases where the fisherman is negligent or at fault. Specifically, such payments are limited "to the extent" that damages were caused by negligence or fault. This establishes a "comparative negligence" type standard. Recovery is not barred totally if negligence or fault is involved. However, the amount of recovery is to be diminished in proportion to the negligence or fault of the claimant.

#### *Section 404—Burden of proof*

Both the House amendment and the Senate bill contain a provision spelling out a set of circumstances under which the standing of any particular claim would be improved. The House amendment states that if the claimant can establish certain facts, there shall be a presumption that his claim is valid, while the Senate bill says that under those conditions there shall be a presumption in favor of the claim.

The lists of circumstances allowing a presumption are similar in the amendment and the bill except that the House amendment refers throughout to damage caused by "material, tools, containers or other items" while the Senate bill refers simply to "obstacles".

The House version requires the report of damages to be made within five days after they are discovered. The Senate bill requires an "immediate report".

The House version requires the lack of a record on nautical charts or the notice to mariners on the date damages were sustained, while the Senate bill specifies no previous or existing record.

Both versions refer to the lack of a surface marker or buoy, but the Senate bill includes this basis only in lieu of the lack of a record on nautical charts. In each of the above instances, the conference report is the same as the House amendment.

Only the Senate bill includes in the list a requirement that the claimant establish that the damage or loss of revenue was received after the enactment date of the act. The conference report is the same as the House amendment, and contains no such provision. It is intended that the Secretary of Commerce, in consultation with the Secretary of Interior, establish area accounts and utilize this title in appropriate

circumstances, for existing leases, permits, or rights-of-way, and be given the discretion to disburse funds for damages occurring prior to enactment.

*Section 405—Claim procedures and subrogation of rights*

Section 405 describes the procedures by which claims are determined and awarded.

Only the House amendment requires a claim to be filed within 60 days of discovery of a claim. The conference report is the same as the House amendment.

*Claims decisions*

The House amendment and the Senate bill differ greatly in the manner in which claims will be considered. The House amendment provides for determination by a hearing examiner and the Senate bill by the Secretary with advice from a board, described in detail in the Senate bill. The conference report follows the House amendment by referring the matter to a hearing examiner.

The House amendment would require the Secretary to refer claims to a hearing examiner appointed under section 3105 of the United States Code and to notify, to the extent reasonable, all persons known to have engaged in activities associated with OCS energy operations in the vicinity. Each person so notified would be required to inform as to whether he admits or denies responsibility for the damages claimed. All such persons would be accorded the opportunity to submit evidence at any hearing conducted in connection with the claim. The hearing examiner would be allowed 120 days to adjudicate the case and render a decision in accordance with section 554 of title V of the United States Code. The conference report follows the House amendment with some minor structural changes.

The House amendment would require the hearing examiner to include reasonable attorneys' fees in the amount certified to the Secretary as compensation for claims which he judges to be valid. The Senate bill allows attorneys' fees when the Secretary's decision is affirmed on judicial review. The conference substitute is the same as the House amendment with minor structural changes.

The House amendment provides that the hearing examiner shall have the power to administer oaths and to subpoena pertinent witnesses and documents in connection with any hearing conducted pursuant to this section. The Senate bill does not mention the right of the Secretary to administer oaths but does give him (and the Comptroller General) access to records. The conference report is the same as the House amendment with minor structural changes.

In any hearing conducted pursuant to this section, the House bill provides that the hearing examiner shall consider evidence of obstructions in the area as identified by the survey required. The Senate bill contains no such provision. The conference report is the same as the House amendment with minor structural changes.

The House bill states that hearings shall be conducted within the judicial district nearest to, or within which, the matter occurred, or, if the matter took place in more than one district, in any of the affected districts. The Senate bill, not providing for hearings, does not have

comparable language. The conference report is the same as the House amendment.

The House amendment provides that decisions by the hearing examiner are final and not reviewable by the Secretary. The Senate bill contains no such language as the Secretary makes the initial decision as to a claim. The conference report is the same as the House amendment.

The House amendment and the Senate bill have similar subrogation provisions. The conference report is the same as the House amendment with minor technical changes so as to provide that payments from a fund to a claimant entitles the Secretary to acquire by subrogation the applicable rights of a claimant against a responsible party. Thus, the right of subrogation is limited to the amounts awarded to the claimant. No other rights, or amounts beyond that awarded, are subrogated.

The House amendment has a provision stating that any person who denies responsibility for damages and is found responsible for damages, and any commercial fisherman who files a claim and is subsequently found to be responsible for damages, shall pay the costs of the proceedings conducted with respect to such claim. The Senate bill has a roughly comparable provision stating that those persons involved in OCS activities who are identified as having caused damages or loss of revenue shall reimburse the fund for such amounts that it has paid to the claimant for such damage. The conference report is the same as the House provision.

Both the Senate bill and the House amendment provide, in a similar manner, for judicial review of decisions made with respect to claims. The conference report is the same as the House amendment.

The Senate bill alone, in addition, provides specifically that in any case in which the person responsible for damage to commercial fishing vessels or gear seeks judicial review, attorneys' fees and court costs shall be awarded to the claimant if the decision is affirmed. The House amendment contains no such specific provision. The conference report contains no such provision, however, elsewhere it does require the hearing examiner to include reasonable attorneys' fees in the amount certified to the Secretary as compensation for claims which he judges to be valid. As with any award for attorneys' fees, this certification may be amended to include costs on appeal.

#### *Section 406—Annual report*

Both the House amendment and the Senate bill require the submission of an annual report by the Secretary to the Congress. The House amendment would require a report setting forth (1) an evaluation of the feasibility and comparative cost of preventing or reducing obstructions on the OCS which pose potential hazards to commercial fishing or fishing gear by imposing fines where appropriate or by requiring the bonding of OCS lessees or permittees, (2) a description of the types of damages set forth in claims filed during the previous year, (3) the amount of compensation awarded during the year, and (4) the number of cases during the previous year in which damages were determined to be the responsibility of a lessee or permittee on the OCS, or of a contractor or subcontractor. The Senate bill would require a report within 6 months after the end of each fiscal year,

which would (1) report on the administration of, and payments from, the fund during such fiscal year and (2) recommend to the Congress such additional legislative authority as may be necessary to improve the management of the fund and the administration of the liability provisions of the title. The conference report is the same as the House amendment, except that paragraph (1) regarding an evaluation of the feasibility and comparative cost of preventing or reducing obstructions on the OCS is deleted as separately provided for in subsection 406(b).

Sec. 406(b) requires the Secretary, after consulting the Secretary of the Interior, to include in the first annual report an evaluation of the feasibility and comparative cost of preventing or reducing obstructions on the OCS which pose potential hazards to commercial fishing or fishing gear by imposing fines where appropriate or by requiring the bonding of OCS lessees or permittees. The conferees believed it was not necessary to provide for this required calculation every year.

#### *Section 407—Survey of obstructions on the OCS*

The House amendment directs the Administrator of NOAA to conduct a 2-year survey of obstructions on the OCS, and requires a report and the development of charts based on the survey. The Senate bill contains no comparable provision. The conference report follows the House amendment with an amendment deleting the specific reference to the Administrator of NOAA. The provision now directs the Secretary (of Commerce) in cooperation with the Secretary of the Interior to conduct a two year survey of obstructions on the OCS, and requires a report and the development of charts based on the survey. It directs the Secretary to concentrate during the first 6 months of the survey on areas of the OCS where oil and gas production has commenced or is expected to commence shortly. It is expected that the Secretary will use the administrator of NOAA to conduct the survey.

#### *Other provisions*

The Senate bill contains a specific provision providing jurisdiction and venue in the district courts over nonclaim controversies. The House amendment has no comparable provision. The conference report follows the House amendment and contains no such provision.

The Senate bill requires the Secretary to ask the Attorney General to represent the fund. If the Attorney General does not respond within a reasonable time, the Secretary may appoint other attorneys. The House amendment contains no comparable language. The conference report follows the House amendment and contains no such provision. It is assumed that as with other provisions of the 1978 amendments, the Attorney General will represent the fund.

The Senate bill contains a section authorizing appropriations for the administration of the title, in the amount of \$200,000 for each fiscal year through 1990. Also authorized is \$500,000 to serve as an initial deposit in the fund, to be repaid to the Treasury as soon as practicable. The authority to pay claims under the title will only be effective to the extent provided, without fiscal year limitation, in appropriations acts. The House amendment has no comparable provision. Establishment of a fund or funds is discretionary with the Secretary. The con-

ference report follows the House amendment and contains no such provision, as authorization to appropriate is now provided elsewhere in this title.

#### TITLE V—AMENDMENTS TO THE COASTAL ZONE MANAGEMENT ACT OF 1972

The Coastal Zone Management Act Amendments of 1976 (Public Law 94-370), among other purposes, were intended to provide Federal financial assistance to coastal States impacted by coastal energy activity.

The coastal energy impact program (CEIP), which was the major section of the 1976 amendments, is composed essentially of three parts. Planning grants are provided to States if their coastal zones are affected by the location of energy facilities. Loans and bond guarantees are also provided to assist the coastal States in financing public facilities and public services required as a result of coastal energy activity.

The third part provides grant funds to coastal States impacted by Outer Continental Shelf (OCS) energy activities which are intended to assist in the financing of public facilities, public services, and environmental costs associated with such activity. These so-called OCS formula grants are provided in section 308(b) of the existing CZMA.

##### *Section 501—Coastal energy impact program*

Both the Senate bill and the House amendment contain amendments to section 308(b) but do not provide any modifications in the planning grants or loans and bond guarantee provisions of the CEIP.

##### *Formula*

The Coastal Zone Management Act (CZMA) provided a formula for distribution of OCS formula grants. The Senate bill makes no change in the four criteria of the present CZMA. The House amendment changes the percentage of each criterion and drops the provision referring to "the number of individuals \* \* \* who obtained new employment in such preceding fiscal year as a result of \* \* \*" OCS energy activity. The conference report contains the House amendment modification of the formula. Specifically, the formula in the conference report is based on three criteria: new acreage leased adjacent to a coastal State (50 percent); oil and gas produced adjacent to a coastal State (25 percent); and oil and gas first landed in the coastal State (25 percent). The present criterion with respect to new employment is dropped in the conference report.

##### *Floor and ceiling*

The House amendment contains provisions which establish an individual State "ceiling," and a "floor" for States which are not included in the formula but which fulfill certain criteria. The Senate bill has no comparable provisions.

With respect to the former provision, the House amendment establishes a ceiling of 30 percent of the total amount credited to the CEIP which any individual coastal State may receive in a fiscal year. Additionally, the amendment provides that any "affected State", as determined by the Secretary of Commerce in accordance with stated standards, which does not fulfill any of the three-formula criteria, but is located in a region of a State which does, shall receive 2 percent of the total amount appropriated in a fiscal year.

Because the nature of the CEIP program and distribution formula is focused on offshore oil and gas activity, the vast proportion of grant funds will continue to be allocated to the region of the country already heavily involved in such activity. A significantly reduced amount could be available to frontier States if one or two "developed" States took a large portion of the appropriated funds. Consequently, the concept of a ceiling is included in the House amendment.

The "floor" provision arises out of the difficulties in adequately anticipating onshore impacts and, in part from the need to rely on delimiting State lateral seaward boundaries for the purpose of allocating CEIP funds. Consequently, it is probable that some States experiencing spillover impact from OCS development may be ineligible for formula grant assistance under the existing formula. The concept of a minimum floor contained in the House amendment is designed to address this particular problem.

Because the 2-percent floor provision allocates funds to nonformula States, it may lead to an inadequate amount of funds being available to provide the full amount to which each State is eligible under the formula. As conforming language, therefore, the House amendment contains a "proportional reduction" mechanism which provides that, when this situation obtains, each State's share will be reduced in accordance with its proportion of any fiscal year's allotment. The Senate bill, because it has no minimum floor for States, has no comparable provision.

The House amendment specifies the coastal States which are located in each of the four regions: Atlantic, gulf, Pacific, and Alaska. It also provides an additional requirement for a State to receive the 2-percent funds. Specifically, such State would have to be an "affected State", the definition of which is taken directly from section 201(f) of the definitions section of the conference report.

The intent of the "affected States" provision is to prevent the coastal States which would not be impacted in a region from receiving the 2-percent funds. This is a particular problem in the Atlantic where all States along the coast are included in one region. For example, OCS drilling in the Baltimore Canyon area may have little or no impact on the State of Georgia but Georgia is included in the Atlantic region by definition.

#### *Sequence and chronology*

The conference report contains the concepts of a ceiling, minimum floor, specification of regions, proportional reduction, and "affected States" determination. However, the managers made certain modifications in some of these House amendment provisions and also agreed to specify statutorily the sequence of steps to be taken in the calculations of individual State allotments and the precise chronology for the imposition of the ceiling, minimum floor, and proportional reduction stages. Also, the managers deleted the provision in the House amendment in which any unallocated funds (resulting from the ceiling) would remain in the Treasury. The conference report contains a provision which would redistribute such funds to coastal States above the minimum and below the ceiling.

Specifically, it is the intent of the managers that the following steps in the calculation be taken in the order indicated:

1. The proportion of each State's allocation under the formula contained in paragraph 2 of section 308(b) of CZMA be calculated.
2. Those "formula" States which would receive an amount less than 2 percent of the amount appropriated should be raised to 2 percent of such appropriation.
3. "Non-formula" States which are located in the region of any other coastal State which is included within the formula are entitled to receive 2 percent of the amount appropriated in a fiscal year if the Secretary of Commerce determines that such non-formula States are being or will be impacted by OCS energy activity and that they will be able to expend or commit the funds accordance with the purposes set forth in the OCS formula grant section.

This clause referring to the Secretary's determination of impact by offshore activity was an amendment offered during the conference committee and accepted by the managers in lieu of a five-part definition of "affected States" which is contained in the House amendment.

"Outer Continental Shelf energy activity" is a defined term in the existing CZMA and refers generally to any offshore exploration, development, or production activity or the siting, construction, expansion, or operation of energy facilities required by such activity. It is the intent of the managers that the Secretary look to OCS energy activity which occurs in the prior fiscal year for purposes of making this determination. This would be consistent with the manner in which the formula is applied, namely that funds appropriated for formula grant purposes are allocated on the basis of OCS activity occurring in the previous fiscal year.

At the same time, it is understood that the phrase "will be impacted" implies an anticipatory judgment by the Secretary and that this discretionary authority to determine eligibility for the 2 percent grants is not, and is not intended to be, strictly circumscribed by hard data. It is the intent of the managers that the 2 percent minimum floor provision provide funds to those States which do not fall into the formula but which will experience spillover impacts necessitating public facilities, public services and environmental costs occasioned by OCS activities. Assessments of the causal effects emanating from such activities and, thus the need for the 2 percent minimum floor for nonformula States, should be determined by the Secretary within the context of this primary purpose and based on an analysis of the immediacy of impact, equity in distribution, and the reasonable needs for and the ability of the States properly to expend the proceeds on OCS-induced public facilities, public services, and environmental needs.

4. If the amount of appropriations is less than the amount payable to all coastal States under those calculations, all States receiving more than 2 percent of the amount appropriated shall be proportionately reduced to conform the amounts payable with the amounts appropriated. Proportional reduction shall be accomplished by reducing the

amounts payable to those coastal States that receive more than 2 percent of the total amount appropriated by an amount represented by the following formula:

$$(T - A) \times \frac{P - 2\% \text{ of } A}{TP - (2\% \text{ of } A \times S)}$$

Where:

T = the total amount payable to all coastal States;

A = the total amount appropriated for making grants;

P = the amount payable to a coastal State which will receive more than 2 percent of the funds appropriated;

TP = the total amount payable to those States which will receive more than 2 percent of the funds appropriated;

S = the number of coastal States which will receive more than 2 percent of the funds appropriated.

5. After the proportional reduction calculations are made, any coastal State which would receive more than 37½ percent of the amount appropriated is to be reduced to 37½ percent of such appropriations.

6. If the application of the 37½ percent ceiling results in any residual appropriated funds, such excess shall be paid proportionately to all coastal States which are to receive more than 2 percent but less than 37½ percent of the amount appropriated. No State may receive more than 37½ percent of the amount appropriated after the residual funds are paid proportionately to the appropriate States. "Payable proportionately" means that any residual funds are to be apportioned among the States receiving more than 2 percent but less than 37½ percent based on the formula contained in paragraph 2 of section 308. In making the formula calculations under that paragraph, the ratios to be calculated for each of the three criteria are to be made up of data applicable only to those States receiving more than 2 percent and less than 37½ percent of the amount appropriated. Specifically the numerator and denominator of the proportions in each of the criteria are to be composed of the appropriate OCS activities of only those States above the 2-percent floor and below the ceiling.

#### *Changes in grant eligibility and use*

Both the Senate bill and the House amendment delete the obligation on a coastal State to obtain financing under the loans and bond guarantees provision of section 308 of CZMA before formula grant funds may be used. The term "new or expanded" modifying Outer Continental Shelf energy activity in the same provision of the existing law is also deleted by both versions. Consequently, the conference report does not contain these two provisions.

#### *Presumption of OCS activity*

The Senate bill contains a provision which authorizes by regulation, in which public facilities and public services are presumed to be required as a result of OCS energy activity. The House amendment has no comparable provision and the conference report follows the Senate bill.

#### *Timing and distribution of grants*

The House bill modifies the existing law with respect to the timing of the distribution of OCS formula grant proceeds and the assurances

which the Secretary must obtain before forwarding such proceeds to the States. The Senate bill contains no comparable language and thereby retains the existing provisions of the CZMA on this matter.

Specifically, the existing law is administered in a manner whereby OCS formula funds are maintained in individual State accounts in the U.S. Treasury (based on the State's allocation under the formula) and dispersed only at the time of expenditure and after a federal review of the purposes of the proposed project.

The House amendment provides that the funds are to be transferred to State banks and held in "escrow" until the Secretary of Commerce completes the project review process, makes a grant award, and the funds are actually expended. The conference report follows the Senate provision.

#### *Section 502—Authorization of appropriations*

The House amendment amends section 9 of the Outer Continental Shelf Lands Act to provide that all Federal OCS rentals, royalties, revenues, and other sums, be deposited in the Treasury (other than the proceeds presently credited). Of this amount, 20 percent (up to a maximum of \$200 million) is to be credited in each fiscal year to the Coastal Energy Impact Fund (CEIF) which was established by the 1976 amendments. Amounts actually dispersed to the States are subject to appropriations. At present, the CEIF is a revolving fund for the provision of loans and bond guarantees to the States for coastal energy activity. There is no fiscal year limitations on the crediting mechanism in the House amendment.

The Senate bill contains standard authorization of appropriations language to increase authorizations for the OCS formula grants from \$50 million to \$75 million for each of the eight fiscal years beginning with fiscal year 78.

The conference report provides for standard authorization of appropriation language at a yearly level of \$130 million beginning in fiscal year 79 and for the following 9 fiscal years.

#### *Section 503—OCS grants*

The House amendment adds a new provision to section 308(c) of CZMA authorizing the Secretary of Commerce to make 80-percent grants to coastal States likely to be affected by OCS energy activities. The purpose of these grants is to enable such States to carry out their responsibilities under the OCSLA. The State responsibilities intended to be financially assisted by such grants include the administrative, policy, operational, and managerial aspects of participating in the Federal leasing program but do not include any of the planning, public facility, public service, or environmental protection costs contained in other provisions of CEIP.

It is the intent of the House amendment that the Secretary of Commerce have considerable discretion in administering this new administrative grant provision. This flexibility is needed because of the uncertainty of lease sale schedules, exploration and production time-tables, and the precise incidence and magnitude of actual impacts on any individual coastal State.

For purposes of dispersing the grant funds to coastal States, this provision intends that some type of formula be established and then

be contained in the regulations promulgated by the Secretary of Commerce.

In 1975, \$3 million was appropriated in supplemental funds to coastal States through the coastal zone management program. This money was to be used by the States to improve their capabilities to plan for and manage projected OCS impacts. In the regulations which were developed to implement these grants, a formula was provided for their allocation among the States. Specifically, a uniform allocation of one percent to the affected States was established. Then, of the remaining funds, 40 percent was to be allocated based on the length of a State's marine shoreline; 40 percent on coastal county population; and 20 percent on the basis of identified needs.

Some formula along these lines is intended by this measure although the precise system of allocation remains with the Secretary and should be based, to the maximum extent possible, on the actual OCS administrative responsibilities borne by each coastal State.

It should also be noted that the recipient executive agency in each State will vary—depending on which department or unit has OCS responsibilities. It need not be the same agency as the one which administers the coastal zone management program for the State or the one which receives coastal energy impact program financial assistance.

The Senate bill contained no comparable provision and the Senate conferees receded to the House. Consequently, the conference report contains a provision for these OCS administration grants at the level of \$5 million per year, beginning in fiscal year 1979 and ending with fiscal year 1983.

#### *Section 504—State management program*

The House amendment modifies the OSC Federal consistency provision (section 307(c)(3)(B)(ii)) of the CZMA by reducing the amount of time by which State concurrence with an OCS exploration, development or production plan consistency certification is conclusively presumed. The Senate bill has no comparable provision and, thus, would retain the present statutory language which provides for a 6-month period for conclusive presumption. The House amendment reduces this to 3 months.

The managers agreed to an amendment which provides that if a State fails to make a consistency determination within 3 months after it receives its copy of the consistency certification, it (the State) shall provide a written statement describing the status of its review and the basis for further delay. The statement is to be submitted to the Secretary of Commerce, the appropriate Federal agency, and the lessee. If the statement is not provided on or before the end of the 3-month period, concurrence by the State with the certification is conclusively presumed. The submission of such statement, however, will preserve the State's present 6-month period for conclusive presumption.

The intent of the amendment is to maintain the 6-month review period but also to put coastal States on notice that they must begin to respond to development and production plans expeditiously and the submission of the written statement is intended to be an indication of that responsiveness.

### *Other provisions*

The Senate bill contains a provision (sec. 507) regarding the inapplicability of any provision in section 308 of CZMA with respect to the National Environmental Policy Act and its effect on grants made pursuant to the OCS formula grants section. The House amendment contains no comparable provision and the conference report follows the House amendment on this matter.

### TITLE VI—MISCELLANEOUS PROVISIONS

This title contains a number of miscellaneous provisions which are for the most part self-explanatory.

The conference report includes sections present, in identical form, in both the Senate bill and House amendment:

*Section 601—Review of shut-in or flaring wells; section 602—Review and revision of royalty payments; section 605—Sunshine in government.*

In addition, the conference report contains sections in this title, reconciling differences between the Houses as follows:

#### *Section 603—Natural gas distribution*

The Senate bill directs the Federal Power Commission (now the Federal Energy Regulatory Commission) to permit natural gas distribution companies to transport natural gas from the Outer Continental Shelf to the service areas of such companies if those companies engage, directly or indirectly, in the development or production of such gas from the Outer Continental Shelf.

The House amendment specifically states that the purpose of this section is to encourage participation by such companies in the acquisition and development of natural gas resources on the Outer Continental Shelf by facilitating the transportation in interstate commerce of natural gas produced from an Outer Continental Shelf lease that is owned by any such company to the company's service area. It directs FERC, after an opportunity for written and oral public participation, to promptly issue and publish in the Federal Register, a FERC policy statement to carry out such purpose and to set general standards under which FERC would consider, under normal FERC procedural rules, applications by such companies for certificates of convenience and necessity for such transportation. Such certificates are to be issued pursuant to section 7 of the Natural Gas Act. The statement of policy will specify criteria, limitations, or requirements that FERC must apply in making determinations whether the applicant company qualifies for consideration of such a certificate pursuant to the FERC policy statement, and whether the public convenience and necessity will be served by the issuance of such a certificate. The policy statement will also establish the general terms or limitations on which FERC may condition, in accordance with section 7 of the Natural Gas Act, the issuance of such certificate. Any needed specific terms and conditions will be included pursuant to section 7 of the act. The section also defines the terms "local distribution company" and "interstate commerce."

The conferees adopted the House amendment with some modifications. It is the intent of this section as modified, to facilitate entry by

gas distributing companies into OCS leasing. To allow bids to be offered by such companies, they need assurances that they will be able to return any gas found on its lease to their own service area. The first modification makes it explicit that this purpose—and the policy to be formulated based on it—is appropriate for gas distribution companies, acting with others or utilizing alternative corporate methods. It is likely that gas distributing companies will enter into joint ventures to obtain OCS leases. Thus, the policy to be established by FERC should be applicable to gas distributing companies owning a portion of an OCS lease, such as participants in a joint bid, or as a part of a consortium.

Thus, the conferees make it clear that the companies need not be the sole owners of an Outer Continental Shelf lease for the production of natural gas. They can be participants, such as in a joint venture, in such lease with other persons who also share the risks and benefits of the lease. It is intended, however, that their participation be substantial and not a sham. It is expected that FERC will, as one element of the criteria of the policy statement, look at the risk shared by the local distribution company (LDC), taking into consideration the size and economic position of the LDC.

In addition, the conferees revised the definition of a local distribution company to include their subsidiaries or affiliates that actually engage in the exploration and production of natural gas on the Outer Continental Shelf. The conferees recognize that local distribution companies may not actually engage in such exploration and production, but they may form subsidiaries or affiliates to perform this function. The amendment would permit such a local distribution company to participate. At the same time, the conferees stress that the definition also requires that the local distribution company, including its subsidiaries or affiliates, must be regulated or operated as a public utility by a non-Federal-Government agency, although such regulation may not be to the same extent as the parent LDC. It is sufficient, in the case of a subsidiary or affiliate formed by the parent LDC, that there be State or local regulation which authorizes or sanctions the creation or organization of the subsidiary or affiliate and which applies, through regulation of the parent, to the costs and funds of the subsidiary or affiliate. FERC must be satisfied that there is sufficient corporate, functional, and financial linkage between the LDC and the subsidiary or affiliate to insure that no sham has been created and that the benefits of this section do not extend to persons, other than LDC's. Any affiliate or subsidiary that is not subject to such regulation is not eligible.

Clearly, as already stated, the intent of this section is to benefit local distribution companies only. It is designed to facilitate entry by such companies in the Outer Continental Shelf leasing so that they can distribute the proposed natural gas to their service areas only. Applications for certificates to transport natural gas by entities other than LDC's and their subsidiaries and affiliates are to be treated under normal FERC standards and procedures pursuant to section 7 of the Natural Gas Act.

In another modification, the conferees provide that FERC is to act promptly to develop a proposed policy statement and issue a final one. The conference committee agreement provides that the statements should be promulgated by the Commission, after full public participa-

tion, within one year after enactment. This period should be ample. However, the conferees recognize that FERC has many other duties and responsibilities. Thus, FERC has sufficient flexibility under the section to take a longer period, if needed. The conferees stress that FERC should make every effort to complete the policy statement, including the required public participation, and promulgate within a one year time frame.

The statement, of course, should be published, when finalized, in the Code of Federal Regulations, along with other FERC rules, regulations, etc. The conferees also wish to make it clear that such a statement can be reviewed from time to time by FERC and revised consistent with the requirements of this section if FERC deems it appropriate.

Finally, the conferees add a provision making it clear that after considering applications for certificates made after promulgation of the policy statement, FERC will issue such certificates where FERC determines it appropriate to do so in accordance with the policy statement and section 7 of the Natural Gas Act.

#### *Section 604—Antidiscrimination provisions*

Both versions include antidiscrimination provisions. The House amendment makes reference to rules under titles VI and VII of the Civil Rights Act. The Senate bill makes reference only to title VI. The conference report follows the House amendment including title VII with an amendment deleting the provision that the antidiscrimination rules shall apply to aliens and include employment outside the United States where the Secretary of Labor shall not have the authority to grant exemptions.

#### *Section 606—Investigation of availability of oil and natural gas from the Outer Continental Shelf*

Both versions provide for an investigation of the availability of oil and gas.

The Senate bill is more inclusive. Thus, its title, findings, purposes and direction relate to all crude oil and natural gas. The House amendment relates only to OCS oil and gas. The conference report contains the more limited scope of the House amendment throughout the section.

The Senate bill authorizes the President to conduct a continuing investigation of availability of all domestic oil and gas. The House amendment directs the Secretary of the Interior to conduct an investigation as to the availability of OCS oil and gas. The conference report is the same as the House amendment.

Both versions provide for a determination or rates of production. The House amendment provides for determination of OCS "maximum attainable rates" and also a determination if actual production is less than MAR. The Senate bill provides for an independent determination of "MER" and "MPR" and for a Presidential study as to whether rates are being met. The conference report is the same as the House amendment.

The House amendment includes a definition of MAR. The Senate bill does not. The conference report is the same as the House amendment.

Both versions provide for the estimate of discovered reserves and undiscovered resources. The House amendment provides for an esti-

mate of OCS reserves and resources only. The Senate bill provides for an estimate of all resources.

In addition, the Senate bill provides specifically for "geological and geophysical explorations carried out by other Federal or appropriate agencies" when determined to be the "only means" to obtain "adequate \* \* \* data". The House amendment contains no such specific comparable language. On these two provisions, the conference report is the same as the House amendment.

The Senate bill provides for determination of the use of oil and gas in terms of its end use market. The House amendment contains no comparable provision. The conference report is the same as the House amendment, and thus deletes this provision.

The House amendment provides for an independent evaluation of trade association procedures for estimating OCS reserves. The Senate bill provides for an independent evaluation of estimates of all reserves serves. The House amendment refers to the evaluation by the Secretary. The Senate bill describes it as by the President. The conference report is the same as the House amendment.

Both versions provide for a report to Congress. The House amendment describes a schedule relating to OCS information. The Senate bill describes a schedule for OCS and non-OCS information. The versions differ in actual months granted and for respective details of information to be supplied. The conference report is the same as the House amendment.

Both versions provide for consultation with the FTC, using different words. The conference report is the same as the House amendment.

The House amendment defines "OCS." The Senate bill has no comparable provision. The conference report is the same as the House amendment.

The Senate bill contains an extensive series of provisions providing for the collection of information, use of other Federal agencies and severance of provisions of this section. The House amendment contains no comparable provisions. The conference report is the same as the House amendment.

The Senate bill would preclude any injunctive relief as to any provision of the act, or action by the President under the act. The House amendment has no comparable provision. The conference report is the same as the House provision.

The Senate bill specifically provides that the invalidity of part of the act or application of the act to a particular person, does not affect the validity of the remainder of the act or application to other persons. The House provision has no comparable language. The conference report is the same as the House amendment.

The Senate bill contains a provision detailing an extensive series of means to collect information, conduct exploratory drilling, use other agencies and delegate authority. The House amendment contains no comparable language. The conference report follows the House amendment and deletes this provision.

As discussed earlier in relation to title II, this section, or any action by the conferees on this section, title or other provisions of the 1978 amendments is not intended, in any way, to affect the authority and responsibility of the Secretary of Energy, FERC, or other agencies

or departments to obtain, collect, and release information under other statutes.

*Section 607—Recommendations for training program*

The House amendment provides for the Secretary of the Interior, working with the Coast Guard, to prepare a report and recommendations for employment training relating to the OCS. The Senate bill has no comparable provision. The conference report adopts the House provision.

*Section 608—Relationship to existing law*

Both the Senate bill and House amendment provide that the 1978 amendments (all titles) are not intended to affect provisions or other statutes—unless expressly provided in the 1978 amendments. The conference report retains this provision.

In addition, both versions provide for retaining the authority given the Department of Energy and Federal Energy Regulatory Commission by the Department of Energy Organization Act but use different language to do so. The conference report is the same as the House language on consistency with the DOE Act. In addition, as described in this statement, in discussing the new definition of "Secretary," (as included in Section 201 of the conference report) the conferees adopted the new definition and made changes in the text and explanatory comments in this statement to specifically indicate the appropriate delegation of responsibilities.

*Other provisions*

The House amendment contains a provision providing for a one-House congressional disapproval of any rule or regulation. The Senate bill has no comparable provision. The House receded and the conference report contains no such provision.

HENRY M. JACKSON,  
FRANK CHURCH,  
J. BENNETT JOHNSTON,  
JAMES ABOUREZK,  
DALE BUMPERS,  
CLIFFORD P. HANSEN,  
JAMES A. MCCLURE,

*Managers on the Part of the Senate.*

JOHN M. MURPHY,  
MORRIS K. UDALL,  
JOSHUA EILBERG,  
GERRY STUDDS,  
BILL HUGHES,  
GEO. MILLER,  
CHRISTOPHER J. DODD,  
JOHN F. SEIBERLING,  
HAMILTON FISH, JR.,  
EDWIN B. FORSYTHE,  
DON YOUNG,  
JOHN D. DINGELL.

*Managers on the Part of the House.*